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Committee on Economic, Social and Cultural Rights
Fifty-seventh session

Summary record of the 3rd meeting*
Held at the Palais des Nations, Geneva, on Tuesday, 23 February 2016, at 10 a.m.

Chair: Mr. Sadi

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Initial report of Namibia

* No summary record was issued for the 2nd meeting.

This record is subject to correction.

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The meeting was called to order at 10.05 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Initial report of Namibia (E/C.12/NAM/1; E/C.12/NAM/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Namibia took places at the Committee table.*

2. **Ms. Böhlke-Möller** (Namibia), introducing the initial report of Namibia (E/C.12/NAM/1), said that, over the 26 years since independence, Namibia had established a good track record of political stability, prudent macroeconomic management, moderate economic growth and natural resource conservation. However, not enough jobs had been created and the country continued to be plagued by prolonged periods of drought as a result of climate change, which added to the challenges faced by the Government in addressing the interconnected problems of poverty and inequality.

3. The Government considered that the protection and promotion of economic, social and cultural rights on an equal basis with civil and political rights allowed for the realization of the right to development; failure in that respect risked creating an imbalance leading to a multitude of problems that would hinder the attainment of the desired outcomes of the 2030 Agenda for Sustainable Development. Inclusive social and economic development, environmental sustainability and peace and security were goals that the Namibian Government wanted to achieve and maintain.

4. **Mr. Schrijver** (Country Rapporteur) said that, while he welcomed the State party's view that economic, social and cultural rights were essential for the advancement of other rights, it was inconsistent that those rights were not recognized in the Constitution. He therefore sought clarification as to whether Namibia considered the rights enshrined in the Covenant to be fundamental and legally binding human rights or merely principles that served as guidance for State policy. In view of reports about the shortcomings of the current Ombudsman, he asked whether the State party intended to establish a national human rights institution that adhered to the Paris Principles.

5. The fact that the Constitution and other national laws referred to the country's many indigenous peoples as "marginalized communities" had the effect of diminishing the legal protection accorded to those peoples in respect of their traditional lands, resources and cultural identity. He wished to know whether Namibia acknowledged the developments that had taken place in international human rights law regarding indigenous peoples, especially those set out in the United Nations Declaration on the Rights of Indigenous Peoples of 2007, and whether it would consider reforming its legislation in order to strengthen the rights of indigenous peoples in Namibia.

6. He invited the delegation to comment on the lack of protection under Namibian law for non-heterosexual persons and on the criminalization of homosexuality. In view of the State party's dubious distinction as the country with the highest level of socioeconomic inequality in the world, he would appreciate an account of the structural factors that were considered to be responsible for that situation. He expressed concern at the fact that Namibia advocated a public policy of free and compulsory education but that education, even at the primary level, was not free at all, and in many regions, not compulsory either.

7. **Mr. Atangana** asked whether, in the case described in paragraph 1 of the State party's reply to question 1, the Namibian Supreme Court decision to grant legal aid to

the defendants had been duly enforced and whether that case had established a precedent for the provision of such aid to defendants as a general rule. He wished to know what had been done to raise awareness among judicial officers of the enforceability of economic, social and cultural rights under the Covenant and requested clarification of the hierarchical relationship between the customary and statutory legal systems operating in Namibia.

8. **Mr. De Shutter** requested a full account of the legal protection accorded to indigenous peoples in relation to the land they occupied and on which they depended for their livelihood. In particular, he wished to know the extent to which the National Resettlement Policy had or had not benefited the San community. He would be interested to know what progress had been made in following up the 2012 recommendations of the Special Rapporteur on the rights of indigenous peoples to address the poor quality of the land provided to the San and the lack of financial and technical support needed to ensure the establishment of viable communities.

9. **Ms. Bras Gomes** asked whether the case referred to in paragraph 1 of the replies to the list of issues was the only one concerning Covenant rights that had been brought before the courts. She sought clarification as to whether the statement made in paragraph 3 of the replies referred solely to the legal aid issue or more broadly to the possibilities for the substantive implementation of economic, social and cultural rights. She wished to know whether the State party's plans to develop new legislation for the prohibition of discrimination on a variety of grounds, which were described in paragraph 16 of the replies to the list of issues, would take the form of specific pieces of legislation on each ground. In her experience, it was better to adopt a framework law that referred to all the grounds and then to enact more specific implementing legislation or regulations. She asked what structural obstacles there were to the implementation of the 2010-2020 National Gender Policy and whether one obstacle might be a lack of awareness or understanding of the law on the part of women, which would be relatively simple to overcome. She requested disaggregated data on how public expenditure for education and housing had evolved, as that would illustrate how different groups in Namibia were protected under the Covenant.

10. **Mr. Kedzia** requested additional information on the status, composition and functions of the Inter-ministerial Committee on Human Rights and International Humanitarian Law mentioned in paragraph 2 of the State party's report. According to paragraph 70 of the report, all human rights instruments ratified or acceded to by Namibia were part and parcel of its domestic law and should be duly enforced. That did not seem to correspond with the statement made in paragraph 138 that there were few cases involving constitutional interpretation owing to the fact that Namibia had a relatively recent Constitution. He was especially concerned that only a few of the economic, social and cultural rights protected by the Covenant were included in the Bill of Rights, which was set out in chapter 3 of the Constitution, while the majority were addressed in article 95 of the Constitution under the heading "Principles of State Policy". That seemed to indicate that a distinction was made between economic, social and cultural rights on the one hand and civil and political rights on the other. He asked whether the provisions of article 95 of the Constitution were enforceable and whether there were any instances in which the subjective rights enumerated in that article had been interpreted by the courts. If not in either case, there was reason to believe that there was a disparity in the constitutional protection afforded the two categories of rights.

11. It was unclear from the absolute figures given in paragraph 28 of the replies to the list of issues for the number of Customary Land Rights Certificates granted whether the process had met the needs of the persons concerned. The data would be more meaningful if they were expressed in the form of percentages. In the light of the

statement made in paragraph 25 of the report that the Married Persons Equality Act of 1996 had made broad and sweeping innovations to the status of Namibian women, he asked if the Act had had a practical impact on the situation of women under customary law practices that related to marriage.

12. **Mr. Pillay** asked what efforts had been made to guarantee the independence of the judiciary and to ensure that individuals who had suffered violations of their economic, social and cultural rights could refer their cases to the Southern African Development Community Tribunal.

13. **Mr. Uprimny** asked whether the Government intended to bring domestic legislation fully into line with the Covenant and recognize the rights of indigenous peoples. Similarly, he wished to know what measures had been adopted to combat discrimination against lesbian, gay, bisexual and transgender persons and guarantee their access to the health-care system, particularly sexual and reproductive health services. Information on steps taken to eradicate gender inequality in customary law would also be welcome. Lastly, he asked what efforts had been made to address socioeconomic inequality.

14. **Mr. Abdel-Moneim** said he would welcome information on any concrete steps taken to promote self-sustaining development and establish an effective national economic development policy.

15. **Ms. Bras Gomes** asked what programmes had been introduced to tackle the high levels of unemployment in rural areas and to reduce long-term unemployment, particularly among the most vulnerable groups such as women and young persons. She also wished to know whether the Government intended to introduce a national minimum wage and raise the existing minimum wages in the agricultural, construction and security sectors. Information on measures taken to ensure that occupational health and safety regulations were upheld in the mining and maritime industries would also be welcome.

16. Concerning the right to social security, she asked the delegation to provide additional information on the establishment of the Retirement Pension Fund and the strengthening of private arrangements to supplement social security schemes referred to in paragraphs 209 and 211 of the report respectively. Lastly, she wished to know whether self-employed workers were eligible to register with the compulsory national insurance system and whether paternity leave would be made available to fathers.

17. **Mr. Kedzia** asked whether the State party had received international development assistance to address the persistently high unemployment rates in the country. He also wished to know whether unemployed persons had access to social security assistance.

18. **Mr. Ribeiro Leão** asked whether the Government intended to adopt specific legislation to protect the right to collective bargaining. He also wished to know what steps had been taken to define the "essential services" whose staff were prohibited from exercising the right to strike, as described in paragraph 187 of the report.

19. **Mr. Martynov** asked whether there were plans to conduct the national labour survey on an annual basis and collect data on employment disaggregated by employee age. He also wished to know whether the Government intended to update its current national employment policy, which dated from 1997. He would welcome information on unemployment rates among persons with disabilities, any measures the Government was taking to address the problem and whether discrimination on grounds of disability was prohibited. He asked whether the proposed SME Bank had indeed been established, how many loans it had granted and what their impact on the creation of small, medium-sized and microenterprises had been. He wished to know whether

the country had a labour inspectorate with adequate human and financial resources, and, if so, whether it had sufficient power to enforce labour laws. Did labour legislation apply fully in any free export zones in the country? Lastly, he would welcome information on the specific measures adopted to regularize the informal sector and whether any categories of informal workers enjoyed access to social protection and assistance.

20. **Mr. Uprimny** asked whether the Government had discussed policies to tackle the problem of rising unemployment, which was perhaps caused by the country's focus on extraction industries, which did not require a large workforce.

21. **Mr. Schrijver** said he would be interested to know the situation of the trade unions, both in law and in practice, what proportion of workers were union members and whether the Government was cooperating with trade unions to improve conditions and wages in the mining sector.

The meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.

22. **Mr. Ndjoze** (Namibia) said that the Inter-ministerial Committee on Human Rights and International Humanitarian Law comprised representatives of nine ministries and was chaired by the Ministry of Justice. It drafted periodic reports for the treaty bodies, sharing them with non-governmental organizations prior to submission, and coordinated efforts to address those bodies' concluding observations. Under the Constitution, all international agreements ratified by Namibia were automatically incorporated into domestic law, with any necessary legislative amendments having been made prior to ratification. However, the Covenant had yet to be invoked before the courts.

23. The fact that some economic, social and cultural rights were included in the Bill of Rights while others were enshrined in the Constitution did not imply a hierarchy. The implementation of some economic, social and cultural rights was expensive, and they had therefore not been included in the Bill of Rights, although they could be enforced by a court order. For example, legal aid had not been included in the Bill of Rights, but the Supreme Court had ruled that it must be granted to those who could not afford to instruct counsel in order to ensure that they had a fair trial. That ruling meant that the Director of Legal Aid was often required to grant it, even when applicants were not in financial need.

24. **Ms. Pickering** (Namibia) said that the Ombudsman had been granted A status under the Paris Principles on three consecutive occasions and thus functioned as the country's national human rights institution.

25. **Mr. Dyakugha** (Namibia) said that all inhabitants of Namibia were equal under the Constitution and considered "indigenous" by the Government. However, some groups, such as the San community, were deemed to be "marginalized communities" and benefited from targeted Government programmes. The Government had passed an act requiring claims to communal land to be registered. However, few marginalized communities had done so, despite efforts to raise awareness of the new requirements. The Government granted land to marginalized communities and provided assistance that included farming equipment, livestock and infrastructure. Unfortunately, that land tended to be of poor quality because the Government purchased land only from willing sellers, who were unlikely to sell productive farms. Consultation with marginalized communities had been undertaken since 2005, when the then Deputy Prime Minister had toured the country and spoken with community and traditional leaders as part of a development project. Such high-level consultation had become routine and was now carried out by the Deputy Minister of Veteran Affairs and Marginalised People.

26. Namibia had received recommendations from several international forums regarding the lesbian, gay, bisexual and transgender (LGBT) community. Although the country did not accept those recommendations, LGBT persons' rights were protected under the Constitution, article 10 of which prohibited discrimination of any kind, and they were not prosecuted as long as their activities took place in private. Marriage for LGBT persons was a sensitive issue in Namibian society, which was very conservative.

27. **Ms. Pickering** (Namibia) said that the law criminalizing sodomy predated independence and was still in effect. Consultation and a possible referendum on decriminalization would take time in a conservative society such as Namibia. Despite the law, there were concerns regarding the spread of HIV and other sexually transmitted infections among gay men, particularly in institutions and places of deprivation of liberty. The Minister of Health and Social Services had therefore launched a consultation process on the distribution of condoms in prisons, and it was hoped that placing a health issue, rather than the decriminalization of sodomy, at the centre of the debate would allow progress to be made.

28. Customary law and the common law inherited from the period before independence were both sources of the Namibian legal system. The Constitution did establish a hierarchy, however, and customary law was recognized only to the extent that it did not conflict with any provision of the Constitution or civil law. On more than one occasion, the courts had declared provisions of customary law to be unconstitutional. The Community Courts Act provided for the adjudication of disputes in traditional courts. The decisions of those courts could be appealed before magistrates' courts. In the event of a failure to comply with an order issued by a traditional court, the case could be registered with a magistrates' court and enforced through that court's procedures.

29. The income inequality in Namibia was due in part to the situation inherited at the time of independence. The country was currently working to move forward from an era of peace and stability to an era of economic emancipation and prosperity for all. Inequality in access to education had been so thoroughly addressed that most government schools were facing a problem of over-enrolment. All Namibian citizens had access to all public services and institutions, which were guided by the same laws and policies and provided services at the same level of quality. It was true, however, that differences in the level of infrastructure were seen when comparing different regions or when comparing urban with rural areas. Again, that situation had been inherited at the time of independence. The Government had focused its efforts on creating infrastructure in areas where it had been lacking, but as a result it had not always been able to properly maintain the existing infrastructure in other areas.

30. It was true that Namibia had one of the worst Gini coefficients in the world. At the same time, in 2009 it had been granted the status of upper middle income country on the basis of its gross national income per capita, which was not necessarily a true reflection of the economic situation in the country. As a result of that classification, many international social partners had withdrawn their support, which made it difficult for the Government to fully realize the Covenant rights for all its citizens. Nevertheless, much had been done to reduce the inequality gap and raise the general standard of living. The statistical data showed that, since independence, there had been a significant drop in the poverty level and significant increases in literacy, access to electricity, school enrolment and other indicators.

31. A number of tax proposals, such as environmental taxes, had been put forward for the 2015/16 budgetary year to help alleviate poverty and income inequality. As for public expenditures, the total national budget was 35 billion Namibia dollars. Of that amount, 18 per cent was allocated to education, arts and culture, 12 per cent to

defence, 10 per cent to health and social services, 8 per cent to law enforcement, 7 per cent to transport, 7 per cent to higher education, training and research, 6 per cent to finance, 5 per cent to urban and rural development, 4 per cent to poverty eradication and social welfare, and 24 per cent to various other expenditures. Her delegation would provide further information in the form of disaggregated data at a later time.

32. **Ms. Bras Gomes** said that she looked forward to receiving the disaggregated data, and emphasized its importance for the Committee's work. She asked the delegation to provide an assessment of the National Gender Policy, including information on the obstacles hindering its implementation and on how those might be overcome. Pointing out that not all Covenant rights were subject to progressive realization, she wished to hear the delegation's views on the State party's core obligations under the Covenant. She noted the Government's plans to adopt legislation on various types of discrimination but wished to know whether a framework law that would cover all forms of discrimination would be adopted.

33. **Mr. Abdel-Moneim** said that there was a link between income inequality and social justice. While some viewed taxes as merely a source of income that States parties could use to finance the fulfilment of their obligations, in his view, developing countries should have more ambitious plans for their taxation systems and should use them as a way of redistributing income, with a view to achieving social justice.

34. **Mr. Uprimny** said that, while he understood the cultural factors influencing the decision not to decriminalize sodomy and homosexuality, the State should play a leading role in working to overcome the prejudices in society. He asked whether the Government planned to recognize indigenous peoples as such, which would entail recognition of their right to self-determination, or whether they would merely be recognized as disadvantaged communities. He noted the significant reduction in poverty in Namibia in recent years but pointed out that efforts to reduce income inequality had been less successful. He therefore wished to know whether there were any specific measures in place to address that problem. He wished to hear the Government's position on establishing a basic income grant.

35. **Mr. Schrijver** said he would like to know why there had not yet been any court cases involving claims of violations of Covenant rights. He wondered whether lawyers, judicial officials and the general public were aware that those rights were, in fact, justiciable. More generally speaking, he wished to know about the human rights training provided for various professional groups.

36. **Ms. Pickering** (Namibia) said that the overarching goal of the National Gender Policy was to achieve equality between the sexes and the empowerment of both men and women. Since the 2015 elections, Namibia now had the third highest percentage of female elected political representatives in Africa and the twelfth highest in the world. Her delegation would provide further information on the implementation of the National Gender Policy once it had consulted with the Ministry of Gender Equality and Child Welfare.

37. **Mr. Dyakugha** (Namibia) said that the Government had approved the ratification of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and a white paper on the subject had been presented to the Cabinet. The Government recognized that indigenous communities had special needs with respect to their development. As for self-determination, however, Namibia was a unitary State with three levels of government, and indigenous communities were already represented at the local and regional levels. The President had issued very clear statements about his intentions to eradicate poverty by means of, inter alia, a solidarity tax and other taxation measures.

The meeting rose at 1 p.m.

United Nations E/C.12/2016/SR.4

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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record of the 4th meeting
Held at the Palais des Nations, Geneva, on Tuesday, 23 February 2016, at 3 p.m.

Chair: Mr. Abashidze (Vice-Chair)

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Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of Namibia (continued)

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In the absence of Mr. Sadi, Mr. Abashidze, Vice-Chair, took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of Namibia (continued) (E/C.12/NAM/1; E/C.12/NAM/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Namibia took places at the Committee table.*

2. **Mr. Dyakugha** (Namibia), replying to a question raised at the previous meeting concerning the lack of judicial enforcement of Covenant rights, said that the Government recognized the need to raise public awareness of those rights and the legal remedies available in the event of violation. To that end, it was considering, among other things, publishing the text of the Covenant and other international human rights treaties ratified by Namibia in the official gazette. A number of NGOs were active in disseminating information on those treaties and in helping individuals to bring cases of human rights violations before the courts.

3. **Ms. Pickering** (Namibia) said that free universal education had been introduced in the State primary and secondary sectors in 2013 and 2016, respectively. However, parents could, if they so wished, make voluntary contributions to a school development fund that was used, among other things, to upgrade sports facilities. Fees were charged for the use of accommodation facilities. As part of a national scheme, children in all government schools were provided with one meal per day.

4. **Mr. Kayala** (Namibia) said that the high levels of unemployment among the rural population reflected the fact that most people lived in the countryside. Although the 1997 employment policy was still in force, the Ministry of Labour and Social Welfare was looking at ways to update it. Under the Labour Act, workers in essential services were not allowed to engage in industrial action; however, they were able to refer grievances to the Office of the Labour Commissioner. Labour inspectors were mandated under the Act to conduct inspections on farms and in other workplaces. The Ministry worked with stakeholders in the mining sector, among others, to raise awareness of statutory regulations on workplace health and safety. Although the wage commission provided for under the Labour Act had yet to be established, the Ministry of Labour exercised the powers vested in it in order to ensure compliance by employers with minimum wage legislation.

5. **Ms. Likando** (Namibia) said that the Government had instructed the Social Security Commission to extend its benefits, including the National Pension Fund and the National Benefit Fund, to cover all those working in both the formal and informal sectors. Consideration was being given to establishing an unemployment insurance fund that would extend the protections offered under current schemes. Although there was no provision for paternity leave as such, it was possible under the Public Service Act for male employees to apply for special leave should they need paternity leave.

6. **Ms. Böhlke-Möller** (Namibia) said that the delegation would reply in writing to the question that had been asked earlier concerning measures to improve employment opportunities for persons with disabilities.

7. **Ms. Pickering** (Namibia) said that the SME Bank had become operational in 2013. Like other institutions with similar mandates, such as the Development Bank of Namibia and the Agricultural Bank of Namibia (Agribank), it provided targeted, low-interest loans with a view to promoting development and reducing income inequality.

8. **Mr. Kayala** (Namibia) said that the right to organize was enshrined in both the Constitution and the Labour Act. As the Ministry of Labour operated on a tripartite basis with stakeholders, trade unions were actively involved in public policy development within the Ministry. The Government was not aware of any cases of workers in the mining sector being prevented from organizing. The Ministry provided a platform for stakeholders to negotiate collective agreements but it did not dictate the content of such agreements. Trade unions involved in those negotiations should be registered with the Office of the Labour Commissioner, have a minimum number of members and meet certain other organizational requirements.

9. **Mr. Martynov** said that he would like to know the actual impact of the three banks mentioned by the delegation in terms of the creation of small, medium and micro enterprises. He would also be interested to know whether there were any free export zones in Namibia and, if so, what trade union rights were enjoyed by workers employed in such zones. Lastly, he would appreciate a reply to his earlier question about the steps taken by the authorities to regularize the informal sector of the economy.

10. **Mr. Schrijver** (Country Rapporteur) said that he would welcome information on the level of trade union membership among workers, in particular those in the mining sector.

11. **Ms. Bras Gomes** asked what difference there was between the Old Age Pension Grant and the National Pension Fund. She would also like the delegation to clarify the status of special leave and whether workers in the private sector were entitled to it. She enquired whether the Government was considering any measures to ensure that low-income workers were able to afford social security contributions and whether it intended to establish a social protection floor to cater for the informal sector.

12. **Mr. Dyakugha** (Namibia) said that, as part of a strategy to attract international investment, the Government had introduced the Export Processing Zones Act in 1995. Although the Act provided for the suspension of the right to strike within such zones, other rights enshrined in the Labour Act continued to apply.

13. **Mr. Kayala** (Namibia) said that the Ministry of Labour had recently launched consultations on regulating the informal economy. Those operating in the informal sector were allowed to register with the Social Security Commission and were thus able to enjoy some of benefits provided by the Commission. The union with most members in the mining sector was the Mineworkers Union of Namibia; it played an active role in defending employee's rights, resolving labour disputes and providing the Government with guidance on how to improve the living conditions of mineworkers.

14. **Mr. Atangana** asked whether domestic violence was a criminal offence under current legislation and, if so, whether the delegation could provide information on the number of complaints and prosecutions that had been brought and convictions secured in that regard.

15. **Mr. Dasgupta** said that he noted the State party's claim, in its replies to the list of issues (E/C.12/NAM/Q/1/Add.1), that most of the alleged harmful traditional practices against women and girls, such as female genital mutilation and so-called sexual initiation practices, did not exist. Female genital mutilation, as defined by the World Health Organization (WHO), included diverse injuries done to female genital organs for non-medical reasons. The Committee was concerned in particular about allegations that the practice of forcible stretching of the *labia minora* persisted in certain areas of the Zambezi Region. He asked whether the allegations were accurate and, if so, what steps were being taken to eradicate such practices.

16. He requested recent statistics on the maternal mortality rate and the mortality rate of children under the age of 5.

17. Commendable progress had been made in addressing the problem of HIV/AIDS and a large proportion of affected persons received antiretroviral treatment. Almost 20 per cent, however, were not yet receiving treatment. He asked what steps were being taken to bridge the gap.

18. He noted that mobile clinics provided health services to remote communities. As such services were clearly limited, he asked whether general practitioners or doctors with basic training attached to mobile clinics were encouraged to use the Internet or videoconferencing to consult specialists in regional hospitals with a view to making advanced medical treatment available to remote communities.

19. **Mr. De Schutter** noted the shift in the agricultural sector from virtually exclusive support for large-scale commercial farmers to greater support for small-scale emerging farmers. He enquired about the measures being taken to help farmers in that category to move beyond subsistence agriculture and to become more commercially viable. In particular, he wished to know whether Agribank provided them with access to credit for the purchase of equipment. He also enquired about support for the emergence and functioning of local markets, including through the establishment of local processing facilities. He asked whether the State party had considered linking the school meals scheme to local support for small-scale farmers. Lastly, he wished to know whether there was a forum for dialogue in which unions of small-scale farmers, such as the Namibia National Farmers Union (NNFU), could contribute to the formulation of Namibian agri-food policies.

20. The ability of politically well-connected people to fence off communal land for their own benefit, having received authorization either from the traditional authorities or from Communal Land Boards, was a disturbing phenomenon, especially since such action was frequently taken at the expense of small-scale farmers, who thereby lost their livelihoods and had virtually no access to legal remedies since they lacked legally recognized title to the land. He invited the delegation to comment on the case that was currently pending in the Kavango Region and asked whether the Land Bill that had been in the pipeline since 2010 would strengthen security of tenure and protect small-scale farmers from such practices.

21. The Committee's general comment No. 12 on the right to adequate food encouraged States parties to adopt a national strategy on food and nutrition security that would define the requisite measures, specify a time frame, and assign responsibility to a particular authority in order to ensure accountability. He asked whether the Namibian Government intended to adopt such a strategy: one could be developed with the NNFU, NGOs and rural communities.

22. **Mr. Kedzia** said that the State party had not provided the updated data on the prevalence of child labour requested by the Committee. It was therefore difficult to assess the scale of the phenomenon and the effectiveness of the measures taken.

23. The Committee noted with appreciation that civil law took precedence over customary law. It had been informed, however, that 80 per cent of marriages were conducted under customary law. In that context, he requested clarification of the information contained in paragraph 226 of the State party's report (E/C.12/NAM/1), which stated that slightly over 28 per cent of the population aged 15 and over were married under civil law or traditional law, that only 19 per cent were married under civil law and that "never married persons" accounted for 56 per cent of the population.

24. The report also stated that customary law did not set a minimum age for marriage, but that marriage generally did not take place before puberty. He asked what

steps were being taken by the State party, in legal terms and in terms of education and awareness-raising, to change cultural traditions and stereotypes that failed to comply with Covenant standards.

25. According to the State party, the issue of the land rights of women who were married under customary law had been resolved by the Communal Land Reform Act. He asked to what extent the State was in a position to ensure compliance with the Act and whether potential rights holders had access to State-administered remedies if their rights were not respected.

26. **Mr. Pillay** asked whether the recommendations made to the State party by the Special Rapporteur on the human right to safe drinking water and sanitation had been implemented, for instance the recommendations to increase the number of water points in rural areas, to raise awareness, particularly among judges and lawyers, of the fact that water and sanitation were justiciable human rights, and to expand the Ombudsman's mandate to include the right to water and sanitation. He stressed the importance of ensuring that the Water Resources Management Act and the Water and Sanitation Sector Policy were implemented. It was also important to promote the implementation of the Environmental Management Act, particularly in order to address the problem of mining activities that were polluting the environment.

27. The Special Rapporteur on extreme poverty and human rights had found that women and children were disproportionately affected by poverty and that 34 per cent of children lived below the poverty line. Other vulnerable groups were persons with disabilities, persons living with HIV/AIDS and sex workers. He asked whether the State party had conducted an assessment of its poverty reduction strategy and whether there were specific measures for disadvantaged groups.

28. According to the Special Rapporteur on extreme poverty and human rights, access to land was a precondition for poverty reduction. There was a lack of affordable housing and land in the State party and 25 per cent of the population lived in informal settlements without security of tenure. Rents were generally unaffordable and were not subject to any formal control. There was also a lack of social housing, especially for older persons. The Committee had requested updated data about forced evictions. He asked whether the number of such evictions had increased and whether victims were protected by adequate legal safeguards and remedies, such as compensation or alternative accommodation. He also enquired about the scale of homelessness in the State party and the availability of shelters.

29. **Ms. Ravenberg** said that the Committee had been informed that some women with HIV-positive status had been subjected to forced sterilization and that the medical personnel involved had failed to obtain the women's informed consent. She asked what measures were being taken to halt forced sterilization of women living with HIV and to ensure that medical staff obtained patients' consent before performing any medical procedures.

30. She also enquired about measures taken to finalize the reproductive health policy initiated in 2009 and to eliminate female genital mutilation and all similar harmful practices.

31. The Committee had been informed that access to physical and mental health care for people in rural and remote areas was unreliable because of the lack of adequate health-care services and of transport to primary health-care facilities. Moreover, many patients suffered further or even died on account of poor infrastructure, lack of beds and a shortage of skilled health workers, managers and professionals. She enquired about measures taken to improve the accessibility, quality and efficiency of primary health-care services and to remedy the shortage of health-care professionals, and asked whether existing policies had been assessed and adjusted in light of the results.

32. She welcomed efforts to provide antiretroviral treatment for HIV/AIDS in the public sector. However, care services for people living with HIV/AIDS were still inadequate. Only 65 per cent of women and girls had access to services aimed at preventing mother-to-child HIV transmission. She enquired about measures to facilitate access to such services.

33. **Mr. Ribeiro Leão** said that, according to the State party's report, the main obstacles to poverty alleviation were HIV/AIDS, unemployment, inadequate access to and poor quality of social services, insufficient livestock and land, and poor road infrastructure. He asked whether the strategies to address those problems had produced positive results.

34. **Mr. Uprimny** asked what practical steps were being taken to reverse the recent rise in infant and maternal mortality. Referring to paragraph 318 of the report, he also asked what strategies were in place to reduce the disparities between private and public health-care providers and to make access to health care more equal.

35. **Mr. Martynov**, citing paragraph 278 of the report, on the failure of the land reform programme to address poverty, requested further details on the land reform. He wondered what the implications were of the Government's frank admission of failure. What percentage of farmers actually held title to the land they worked?

The meeting was suspended at 4.25 p.m. and resumed at 4.45 p.m.

36. **Mr. Kayala** (Namibia) said that the Old Age Pension Grant was a long-standing benefit, managed by the Ministry of Labour and funded through social security contributions; whereas the National Pension Fund had been introduced after a study had found that most private-sector workers, unlike civil servants, did not receive a retirement pension. Consultations were under way to improve the Fund.

37. **Ms. Likando** (Namibia) said that there was no paternity leave in Namibia. Special leave was intended to cover any situation not falling under sick leave, compassionate leave or maternity leave, but was not an alternative to paternity leave. There was currently no discussion of introducing benefits for fathers.

38. **Ms. Pickering** (Namibia) said that the issue of violence against women was very high on the Government's priority list. It remained quite widespread despite the adoption of the Combating Domestic Violence Act. Statistics were compiled, but it was difficult to obtain precise figures because cases were sometimes recorded twice under different categories of offences or recorded under another offence altogether. The Government continued to work with various stakeholders, including local NGOs, and was in the process of reviewing the Act to introduce harsher penalties and facilitate the timely issuance of protective orders. The very progressive Combating of Rape Act had also been adopted, and statistics on its enforcement were being kept.

39. **Ms. Likando** (Namibia), supported by **Mr. Ndjoze** (Namibia), contested the claim that female genital mutilation was practised in Namibia as there was no tangible evidence or police reports to support the allegation.

40. **Mr. Dasgupta** said that the Committee had obtained its information from the NANGOF Trust alternative report submitted to the Committee on the Elimination of Discrimination against Women in June 2015.

41. **Ms. Pickering** (Namibia) said that the delegation would refer the issue to the Inter-Ministerial Committee on Human Rights and International Humanitarian Law in order to ascertain the veracity of the reports.

42. **Mr. Tjivambi** (Namibia) said that the main strategy to address maternal mortality and access to health care was to increase the number of health-care providers. The first cohort of community-based health workers had been selected,

trained and deployed in two pilot regions. The six-month training programme covered skills such as identifying at-risk mothers and administering first aid, with a view to referring patients as early as possible in order to avoid unnecessary complications. The programme was now being rolled out in the rest of the country. In addition, nurses were being recruited from Zimbabwe and a programme had been put in place to enable medical personnel to be trained abroad. Other measures included providing early treatment of HIV/AIDS and improving emergency maternal and neonatal care.

43. A number of measures in addition to voluntary male circumcision were being taken to combat the spread of HIV/AIDS, including the medical circumcision of male infants, antiretroviral therapy, efforts to prevent mother-to-child transmission, public education and the distribution of male and female condoms. That combined approach was expected to lead to improved results.

44. Mobile clinics could not be connected to the Internet because they were merely designated outreach points — sometimes a simple tree — where villagers could be examined every two weeks by health-care professionals from the nearest clinic. Those with minor problems were treated on the spot, while more serious cases were referred to the nearest facility. Sterilization could be performed only with the person's consent, for which it was necessary to fill out an affidavit at a police station for submission to the health authority.

45. **Mr. Dyakugha** (Namibia) said that the problem of illegal fencing had arisen in 2000, and in response the Government had banned the practice under the Communal Land Reform Act. The Act also provided for the establishment of Communal Land Boards, which had the authority to issue notices for the removal of illegal fences. If the offender did not remove the fences voluntarily, the case was taken to the courts; however, the process could be quite lengthy. He was not in a position to comment on ongoing court cases.

46. The Environmental Management Act had been adopted in 2007 and had entered into force in early 2012. Under that Act, mining operations and major development projects could not go ahead unless environmental impact assessments were submitted to the Ministry of the Environment and Tourism and to other relevant authorities.

47. The right to housing was not explicitly enshrined in the Constitution, but in several cases the undue seizure of a person's house had been interpreted as a violation of the right to privacy, which was provided for in article 13 of the Constitution. Evictions in urban areas now occurred only where the local authority was the property owner and only after issuance of a court order. No longer were buildings simply demolished. They were taken down or removed in such a way that the materials could be reused by their owners. To mitigate the housing shortage, plans had been made to build 180,000 additional houses and upgrade thousands of structures in informal settlements by 2030. Information on customary land rights and leasehold in communal areas would be provided in due course.

48. **Mr. Kayala** (Namibia) said that Namibian labour inspectors were empowered to look into the prevalence of child labour in particular industries, such as agriculture and the retail trade, and that those industries had not been found to resort to the practice to any significant extent. There had, however, been reports in the media of children from neighbouring countries immigrating to Namibia in search of work.

49. **Ms. Pickering** (Namibia) said that reports of exploitation of children's labour in Namibia could be misinterpreted by people unfamiliar with Namibian child-rearing customs, which commonly involved families from the countryside sending their children to pursue their schooling in the cities, where they lived with extended family members and were expected to perform household chores.

50. **Mr. Kayala** (Namibia) said that the Government was currently drawing up a list of hazardous jobs showing what jobs could or could not be done by children and at what age.

51. **Mr. Kedzia** said that, although the State party's core report highlighted the role post offices played in facilitating communication in isolated areas, he would appreciate information on access to Internet, particularly in communities that were placed at a disadvantage by their isolation or poverty. He would also appreciate information on the results of the efforts that the Government had made to bring formerly marginalized minority communities into the mainstream of society. What were the Government's latest priorities in that respect?

52. **Mr. Kerdoun** asked whether the delegation could explain the reasons for a number of problems in the education sector. He wondered, for instance, why, despite the considerable efforts that had been made since independence, the State party had not yet built enough school facilities or hired enough qualified teachers and why only some 50 per cent of people with disabilities in the 15-24 age range had ever attended primary school. He also asked what accounted for the significant disparities in access to education between rural and urban areas and from one region or ethnic group to another. Why was free secondary education being instituted only in 2016, when, if he had understood correctly, the law that had provided for it had been adopted years earlier?

53. He wondered what measures Namibia had taken, or was planning to take, to act on recommendations by the United Nations Educational, Scientific and Cultural Organization (UNESCO) that it should do more to combat discrimination in schools against children of San and Himba origin. He also wished to know whether the Government had committed substantial resources to teacher training in minority languages and the development of teaching and learning materials in minority languages, so that all Namibian children had the opportunity to become literate in their mother tongue, as had been recommended by the Special Rapporteur on extreme poverty and human rights. Information on the results of any efforts made to follow that recommendation would be welcome, as would relevant educational statistics broken down by a number of factors, including disability, sex and region.

54. **Mr. Uprimny** asked what strategies the State party had put in place to provide access to early childhood education, especially for children from low-income families. He also asked whether any broad measures had been taken to encourage the provision of vocational education and training in secondary schools.

55. **The Chair** said that he would appreciate information on the specific legal status of the State party's distinct population groups, which were variously referred to in official documents as individual communities, cultural groups or ethnic groups. In that connection, he asked whether the Government had any plans to legally recognize the indigenous status of any particular population groups. He also asked what was being done to improve the socioeconomic situation of the Himba, the San, the Ovazemba and other relatively disadvantaged population groups. Local Authorities Act No. 6 of 1992 should be amended to reflect the current concerns of indigenous population groups. He took it that responsibility for indigenous welfare was within the scope of various agencies answering to the Ministry of Youth, National Service, Sport and Culture or the Ministry of Basic Education, Arts and Culture. Would it not be preferable to assign responsibility for indigenous affairs to a specific ministry?

56. **Mr. Kedzia** asked whether the Government was considering making thorough instruction in human rights a part of the school curriculum in grades other than 11 and 12 alone.

57. **Ms. Ravenberg** said that she had not heard whether female genital mutilation was explicitly criminalized, whether there had been any prosecutions in respect thereof and whether any related public awareness efforts had been made. The information about the forced sterilization of women with HIV had come from three NGOs, whose reports had referred to 40 such cases in 2010 and 2011.

58. **Mr. Schrijver** asked whether the voluntary payments parents could make to their children's primary schools were truly voluntary. He would appreciate a comment from the delegation on the possible relationship between the alarmingly high dropout rates in the State party and what appeared to be high rates of drug and alcohol use among its young people.

The meeting rose at 5.55 p.m.

United Nations E/C.12/2016/SR.5

Economic and Social Council

Distr.: General
26 February 2016

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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record (partial)* of the 5th meeting
Held at the Palais des Nations, Geneva, on Wednesday, 24 February 2016, at 10 a.m.

Chair: Mr. Sadi

Contents

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of Namibia (continued)

*No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

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The meeting was called to order at 10.05 a.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of Namibia (continued) (E/C.12/NAM/1; E/C.12/NAM/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*

2. **Ms. Pickering** (Namibia), responding to questions put by Committee members during the previous meeting, said that numerous efforts had been made to combat traditional gender stereotypes and implement the national gender policy: gender-sensitive budgeting had been introduced and gender equality awareness-raising campaigns conducted. However, progress had been hampered by the absence of an effective national gender-mainstreaming programme, the lack of data disaggregated by sex and the limited human and financial resources available. To address such challenges, the Government had appointed 48 focal points to promote gender equality at a local and regional level and had conducted training on data collection and gender equality issues for key government staff.

3. **Mr. Ndjoze** (Namibia) said that the Constitution guaranteed the independence of the judiciary and stressed that there had been no interference in judicial affairs by the executive or other individuals. The decision to suspend the Southern African Development Community Tribunal was taken by all the Southern African Development Community member States during the 2010 Heads of State Summit. The Namibian Government was therefore not in a position to comment on whether the suspension would be reversed in the future.

4. **Mr. Kayala** (Namibia) said that, owing to the country's limited human and financial resources, the national labour force survey was not always conducted on an annual basis. The delegation could however provide the Committee with up-to-date employment figures disaggregated by sex and age at a later date if required. There was a total of 188 labour inspectors who were responsible for monitoring working conditions in a variety of workplaces. Their mandate and powers were clearly set forth in the Labour Act. The Act also provided for the right to freedom of association and the establishment of trade unions. There were two national federations of trade unions, namely the National Union of Namibian Workers and the Trade Union Congress of Namibia.

5. **Ms. Likando** (Namibia) said that, in addition to loans for the purchase of farm land, the Agricultural Bank of Namibia provided livestock and equipment loans to farmers. It also provided support to small-scale farmers aimed at increasing their productivity and had appointed 34 mentors who offered tailored productivity training to farmers across the country.

6. **Ms. Pickering** (Namibia) said that the Married Persons Equality Act had abolished the concept of marital power, by virtue of which the husband had previously exercised authority over the property of his wife, and provided that married women could acquire and own land independently. The Communal Land Reform Act set forth the land rights of women who had been married under customary law and stipulated that they had the right to inherit land owned by their deceased partner. Notwithstanding the progress made in relation to women's land rights, the Government recognized that more work was required to guarantee women's equal access to land and property ownership and it remained committed to taking the necessary steps in that regard.

7. Over recent years, concerted efforts had been made to improve access to water and sanitation. Unfortunately, there were still sharp disparities in access to basic services between rural and urban areas. For example, some 97.5 per cent of urban households had access to clean drinking water compared to 75.5 per cent of rural households, and more than 76 per cent of rural households did not have access to adequate sanitation facilities compared to 14 per cent of urban households. The Government recognized that great improvements were needed and aimed to substantially improve access to water and sanitation in rural areas by 2017. As a starting point, numerous potable water points had been installed in rural communities across the country.

8. **Mr. Tjivambi** (Namibia) said that women who had been sterilized without their consent had been awarded compensation. There had been no subsequent reports of forced sterilizations in recent years.

9. **Ms. Negumbo** (Namibia) said that the Government used data derived from household consumption expenditure as an indicator of living standards and as a means of monitoring the impact of its poverty reduction strategies. Between 1993 and 2010, there had been a significant shift in the distribution of income, which had led to an overall increase in living standards and a reduction in the number of persons living below the poverty line.

10. **Ms. Pickering** (Namibia) said that the Child Care and Protection Act would be enacted as soon as the attendant implementing regulations had been adopted. The Act provided for the establishment of a juvenile justice system and offered protection against harmful cultural practices such as female genital mutilation. The Government had also appointed a Children's Advocate within the Ombudsman's Office who was responsible for handling reports of female genital mutilation and combating such harmful cultural practices.

11. The 2011 update to the Government's policy on early childhood development and education had reinstated State-run pre-primary schools, which were completely free of charge and staffed by teachers who held a qualification in early childhood education from the Namibian College of Open Learning. The introduction of free secondary education had been delayed because of financial constraints, but had been completed in 2016. The requirement for children to be taught in their mother tongue placed a significant burden on the Government because 16 different languages were spoken in Namibia. Nevertheless, all children in grades one to five received teaching in the local language, with particular attention being paid to marginalized groups, and teaching materials in the various languages were being developed. Teachers could complete additional training through the Namibian College of Open Learning. Although there was a policy on vocational training, more work was needed to raise awareness of its benefits and to reduce the stigma surrounding it. There was a variety of vocational training centres in the country, including the Namibian Institute of Mining and Technology, where a large number of students were enrolled.

12. **Ms. Böhlke-Möller** (Namibia) said that, although there were no statistics on Internet access, the World Economic Forum had reported that the country possessed a robust network and enjoyed the third highest rate of Internet usage in the region. The Government was working to provide Internet access for all citizens and to equip schools with computers. There were currently 141 post offices located throughout Namibia. Given the country's large surface area and relatively small population, providing access to the Internet and to post offices required time and resources.

13. **Ms. Pickering** (Namibia) said that the national human rights action plan had identified disability as an area of concern, citing, inter alia, discrimination against persons with disabilities in the area of employment, their underrepresentation in the workplace and the effectiveness or otherwise of the National Disability Council. The

plan aimed to improve the information available on the rights of persons with disabilities, gather information on the extent of violations of those rights, undertake awareness-raising activities among the general public and implement legal and regulatory reform to give effect to the non-discrimination provisions contained in international and regional instruments. To that end, it provided for an assessment of the physical accessibility of buildings and workplaces and the establishment of a commission to conduct research into discrimination against persons with disabilities and provide relevant recommendations. A Deputy Minister of Disability Affairs, herself a person with a disability, had been appointed. Although there were no plans to pass anti-discrimination legislation that protected all of the groups not listed in the Constitution, they were all addressed in the national human rights action plan.

14. **Mr. Pillay** said that little progress seemed to have been made in closing the wide gap between rich and poor in Namibia. The Government did not appear willing to address poverty, which was particularly prevalent in rural areas in the north of the country, and had failed to resolve the issues observed during visits by United Nations Special Rapporteurs. The responses given so far to requests for information on the progress made in that regard had been very vague, and so he would like to know what specific measures had been adopted since 2013 to eradicate poverty.

15. **Mr. De Schutter** asked whether support was provided for local agricultural markets, whether school meals programmes sourced food from small farmers, how agricultural and food policies were drawn up and whether the Namibian National Farmers Union was involved in that process. He requested statistics on the number of small farmers who held the title to their land.

16. **Ms. Bras Gomes** said that, although gender mainstreaming was a positive step, affirmative action and policies for specific groups of women should also be implemented. Investment in the compiling of disaggregated data, while costly, would be worthwhile because it would allow the impact of national policies to be evaluated. Disaggregated data should be based on the indicators identified by the Office of the United Nations High Commissioner for Human Rights.

17. **Mr. Schrijver** (Country Rapporteur), noting with satisfaction that the Office of the Ombudsman had been granted A status in its function as the national human rights institution, said that he wished to highlight the concerns of the Subcommittee on Accreditation that the Ombudsman's mandate did not extend to all economic, social and cultural rights and the length of that mandate was not limited by law; that the Office of the Ombudsman could not recruit its own staff; and that its budget was insufficient and did not come from a well-defined source. He asked how many workers were members of the country's two main trade unions.

18. **Mr. Uprimny** asked what strategies had been implemented to address the imbalance between rich and poor in terms of infant mortality rates and access to quality health-care services. Noting that the State party's economy seemed to be experiencing jobless growth, he asked whether the Government was considering ways of addressing the high levels of unemployment and informal employment in the country.

19. **Mr. Atangana** noted with satisfaction the delegation's recognition of the need to combat domestic violence and requested further statistical data on that subject.

The meeting was suspended at 11.15 a.m. and resumed at 11.40 a.m.

20. **Ms. Böhlke-Möller** (Namibia) said that a new Ministry of Poverty Eradication and Social Welfare had recently been established and that the Government had identified both poverty eradication and housing as top priorities. A committee had been set up to review matters concerning the ownership and occupation of land, and the related problems were expected to be resolved in the next few years.

21. **Mr. Ndjoze** (Namibia) said that information on the strategies used to guarantee the right to food would be provided in writing following consultations with the Ministry of Agriculture.

22. **Ms. Pickering** (Namibia) said that, in 2007, the Ministry of Gender Equality and Child Welfare had conducted a study on gender-based violence covering 8 of the country's 13 regions. According to the results, nearly 70 per cent of respondents had experienced some form of gender-based violence, including about 34 per cent who had experienced physical or sexual violence inflicted by a partner. More than 40 per cent of the respondents believed that a husband would be justified in slapping his wife if he found out that she had been unfaithful. The Demographic Health Survey had produced similar data, indicating that further education and awareness-raising about gender-based violence was needed. There was little evidence that women living with HIV were subjected to increased levels of physical violence. Another study had been conducted in 2009 on traditional practices that might promote or aggravate gender-based violence, and the results of that study could be provided in writing if desired.

23. She would share the Committee's observations with the Office of the Ombudsman and with the relevant political stakeholders so as to avoid any situation in which the Office might risk losing its A status. It had recently been allocated additional human resources, enabling it to draft a white paper on the rights of marginalized communities and speed up the process of drafting the national human rights action plan.

24. **Mr. Dyakugha** (Namibia), speaking about the erection of illegal fences, said that he could provide statistical data only on the area around the Tsumkwe settlement, which was predominantly inhabited by the San people. Since 2012, a total of 120 illegal fences had been identified in that area, mostly as a result of joint investigations carried out by the communal land board and the police in accordance with the Communal Land Reform Act. Notices had been served to the persons concerned informing them that they must remove the fences. Thus far, 39 fences had been removed voluntarily. A number of court cases were currently under way in relation to the remaining fences. Most of those had been abandoned by the persons who had erected them, and in some cases the gates had been removed. Thanks to the awareness-raising and consultation efforts of the communal land board, very few illegal fences had been erected in the area since 2013.

25. **Mr. Kayala** (Namibia) said that there were about 600,000 workers employed in Namibia. Of those, 60,000 to 70,000 belonged to the National Union of Namibian Workers, while 20,000 belonged to the Trade Union Congress of Namibia.

26. **Ms. Böhlke-Möller** (Namibia) said that answers to the questions on infant mortality would be provided in writing.

27. **Mr. Tjivambi** (Namibia) said that all Namibian citizens had the right to access health care, even if they lacked the means to pay for it. In an effort to address the gap in quality between public and private health-care facilities, the Government was conducting a major human resources development and recruitment campaign and had set targets for the number of Namibian health-care professionals to be trained by 2017, in addition to those who would be recruited from other countries. As the shortage of human resources was a major factor contributing to the poor quality of health care, those efforts were expected to improve the situation in that regard. In addition, the Government would also be improving the conditions of service for health-care professionals in rural areas as an incentive for professionals to take up posts in those areas.

28. **Ms. Böhlke-Möller** (Namibia) said that her delegation would provide information in writing on the strategy to reduce unemployment.

29. **Mr. Schrijver**, thanking the delegation for its very relevant replies to the Committee's questions, said that he noted that the dialogue was a special one, as it was

the first time that the State party's representatives had met with the Committee. While the submission of the State party's report had been long overdue, he believed that the exercise had been beneficial for the Committee, the Government and Namibian civil society, and he hoped that the next periodic report would not be similarly delayed.

30. **Ms. Böhlke-Möller** (Namibia) said that she thanked the Committee members for their input and constructive engagement and hoped her delegation had succeeded in providing comprehensive answers to most of the Committee's questions. The questions that remained pending would be answered in writing. Her Government looked forward to receiving the Committee's concluding observations and would disseminate them to the relevant ministries. She wished to reaffirm her Government's commitment to the promotion and protection of economic, social and cultural rights in the country.

31. **The Chair** said that, as it was the first time the State party had presented a report for consideration by the Committee, he hoped that it had been a valuable learning process for the delegation. At the consideration of the next periodic report of Namibia, which he hoped would be submitted in a more timely manner than the initial report, the State party should describe the actions that it was currently taking and had already taken to give effect to the Covenant rights, rather than merely expressing its intentions and plans for the future. The delegation had referred to certain peoples in the country as marginalized. From the Committee's viewpoint, States parties were required to make special efforts to address the needs of marginalized peoples, and he hoped that the Government would embrace that approach.

The discussion covered in the summary record ended at 12.10 p.m.

United Nations E/C.12/2016/SR.6

Economic and Social Council

Distr.: General
29 February 2016

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Committee on Economic, Social and Cultural Rights
Fifty-seventh session

Summary record of the 6th meeting
Held at the Palais des Nations, Geneva, on Wednesday, 24 February 2016, at 3 p.m.

Chair: Mr. Sadi

Contents

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Canada

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The meeting was called to order at 3 p.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Canada (E/C.12/CAN/6; E/C.12/CAN/Q/6 and Add.1)

1. *At the invitation of the Chair, the delegation of Canada took places at the Committee table.*

2. **Ms. Wernick** (Canada), introducing the sixth periodic report of Canada (E/C.12/CAN/6), said that the federal, provincial and territorial governments had worked together to prepare for the interactive dialogue with the Committee. Civil society and indigenous organizations had also played a role in identifying and advancing important areas of discussion.

3. The 150th anniversary of Canadian confederation in 2017 was an important milestone that provided an opportunity to reflect on the country's long-standing commitment to the promotion and protection of human rights, a commitment that was based on three essential characteristics: a pluralistic and inclusive society; inclusive and accountable governance with cooperation across all orders of government; and the vital role of civil society and indigenous peoples.

4. Respect for diversity was a driving force behind Canadian cultural, political and economic achievements. The country's experience with peaceful pluralism had taught it to respect diverse views and to accept that the strength of Canadian society depended on the full participation of all its citizens. That commitment had recently been reaffirmed in the appointment of a new federal Cabinet, in which 50 per cent of the ministers were women and 17 per cent were members of visible minorities.

5. Canada was a multicultural society of 35 million people with two official languages, English and French, and over 200 different ethnicities represented in the population. The population of indigenous peoples of Canada, comprising the First Nations, Inuit and Métis, totalled about 1.4 million people and included more than 600 First Nations communities, representing some 50 cultural groups.

6. Canada was a federal State with a federal Government, 10 provincial governments and 3 territorial governments. Each one had its own sphere of constitutional jurisdiction. All orders of government took their obligations under the Covenant seriously and shared a strong commitment to working together to protect and advance human rights. The country's cooperative approach to implementation allowed provincial and territorial governments to find local solutions to local concerns. When combined with federal policies and commitments, the cooperative approach created a strong foundation for the realization of rights under the Covenant.

7. All governments consulted civil society, community groups, indigenous organizations and other stakeholders on specific policies and programmes that served to implement human rights. Their views had played a crucial role in informing the country's response to the Committee's list of issues and in highlighting the important human rights issues facing Canada.

8. The open and cooperative approach was further strengthened by features of the Canadian legal system, such as the Constitution and the independent judicial system, which ensured that Canadians across the country had a common base of human rights protections. The Covenant was implemented through a multitude of laws, policies and programmes across all orders of government. Jurisdictions often worked together to address challenges in areas such as health, social services, housing, homelessness, family

justice, and issues affecting indigenous peoples and persons with disabilities. Where Canadians considered themselves to be subject to a violation of their rights, their avenues to challenge and redress were accessible and well established.

9. The Canadian Charter of Rights and Freedoms, which formed part of the Constitution, guaranteed equality and non-discrimination. Canadians could exercise their rights without discrimination based on race, national or ethnic origin, religion, disability, age, sex or sexual orientation. The Charter guaranteed civil and political rights and protected a number of rights enshrined in the Covenant, such as the right to form and join trade unions, the right to strike, the right to reside and earn one's living in any territory or province, rights relating to the official languages, and rights relating to education in an official language in areas where it was not the majority language. Many provinces had also enacted their own human rights legislation, which guaranteed even stronger protection of Covenant rights at the local level.

10. While the Constitution recognized the existing or treaty-based rights of the indigenous peoples, everyday life was still not easy, equitable or fair for many of them. Canada was committed to a renewed nation-to-nation relationship with indigenous peoples, based on recognition, rights, respect, cooperation, partnership and a spirit of reconciliation. It was essential at the outset to recognize and respect Aboriginal title and rights in accordance with the Constitution, international treaties and other key instruments such as the United Nations Declaration on the Rights of Indigenous Peoples, which Canada planned to implement.

11. Five cross-cutting priorities had been established for the country's relationship with indigenous peoples: moving forward with rights and reconciliation; giving priority to children and young people; supporting stronger indigenous communities; improving the quality of life of Métis individuals and communities; and making the northern part of the country strong, inclusive and vibrant. With a view to achieving those priorities, the Government would enter into discussions with First Nations, Métis Nation and Inuit leaders, provincial and territorial governments, parties to the Indian Residential School Settlement Agreement, and other key partners with a view to designing an engagement strategy for developing a national reconciliation framework based on the recommendations of the Truth and Reconciliation Commission. A key prerequisite for the achievement of the five priorities had been the launching of a national public inquiry into missing and murdered indigenous women and girls. As a result of cooperation across all orders of government, a renewed relationship and a nation-to-nation approach, indigenous peoples in Canada would be better able to enjoy their economic, social, and cultural rights.

12. Canada had a comprehensive social protection and assistance framework and an enviable record of human development and social mobility. People were better educated and more prosperous and were living longer than at any point in Canadian history. Continued action was nonetheless being taken to strengthen social assistance and protection programmes, and to advance social innovation so that all individuals and communities could better realize their economic, social, and cultural rights. The long-form census questionnaire would be restored to provide up-to-date and accurate data.

13. Canada was committed to strengthening the middle class and to lifting more Canadians, including children and older persons, out of poverty. The federal Government was currently developing a National Poverty Reduction Strategy to supplement those already existing in provincial and territorial jurisdictions and in municipalities. The Government also intended to develop a strategy to restore strong federal support for affordable housing, for instance by supporting Housing First initiatives that helped homeless Canadians to find more permanent housing.

14. Several new initiatives, including an Early Learning and Child Care Framework, were being developed in partnership with the provincial and territorial governments with a view to providing affordable, high-quality, flexible and fully inclusive childcare for Canadian families. In addition, budgetary proposals would be made for the creation of a generous tax-free child benefit for the neediest families.

15. With a view to encouraging governments across the country to foster a new generation of workers with the right skills, the Government had committed itself to making post-secondary education more affordable for students from low and middle-income families. Student loans, bursary programmes, as well as tax-assisted and government-assisted savings plans provided further opportunities for all Canadians. Recently, for example, the province of Newfoundland and Labrador had eliminated provincial student loans in favour of needs-based grants to support access to post-secondary education.

16. The publicly funded universal health-care system was a source of pride for Canadians. Adopting a collaborative approach, the country was negotiating a new multi-year Health Accord with provincial and territorial governments to ensure that the health-care system could meet current needs and adapt to new challenges.

17. The employment insurance system would be strengthened with a view to ensuring that all Canadians, including vulnerable and underrepresented groups, had the support they required to find gainful employment and to live active and healthy lives. For instance, the federal Government had committed itself to removing the long-standing new entrant and re-entrant provisions that disproportionately affected recent immigrants and younger workers. The federal Employment Equity Act was designed to remove barriers to employment and upward mobility facing four designated groups: women, Aboriginal peoples, persons with disabilities and members of visible minorities. Those groups accounted for at least 60 per cent of the Canadian workforce. Such federal, provincial and territorial policies, programmes and decisions promoted the dismantling of barriers to the realization of rights, including those of vulnerable or underrepresented groups.

18. Canada had long been a destination of choice for immigrants and remained among the top immigrant-receiving nations. Communities were strengthened when governments and society worked together to welcome newcomers who would contribute to the country's development. In November 2015, the federal Government had committed itself to increasing the resettlement of Syrian refugees, setting an initial goal of 25,000 by the end of February 2016. As of 16 February 2016, more than 23,000 Syrian refugees had been resettled in more than 100 communities across the country.

19. In addition, Canada was taking steps to ensure that its immigration and refugee policies remained open, accepting and generous. To that end, it was currently developing initiatives to assist immigrants in reuniting with their families. During the current year, for example, it had doubled the number of places for parents and grandparents of immigrants. Canada had also fully restored the Interim Federal Health Program, which provided limited and temporary health benefits to resettled refugees and asylum claimants.

20. Canada was proud of its continued progress towards realizing Covenant rights. While challenges remained, it was committed to addressing them with a renewed spirit of cooperation across all orders of government and a belief that such challenges were best addressed through an inclusive, open and transparent approach that leveraged the strength of diverse viewpoints.

21. **Mr. Mancisidor de la Fuente** (Country Rapporteur) said that he welcomed the steps taken to promote gender balance and the participation of minorities in the new Government.

22. The State party frequently gave priority to civil and political rights over economic, social and cultural rights when interpreting the provisions of the Canadian Constitution and the Charter of Rights and Freedoms. For instance, the head of the delegation had stated that the Charter fully guaranteed civil and political rights and protected many economic, social and cultural rights. The Charter could, however, be interpreted as providing protection for all the rights enshrined in the Covenant. He therefore urged the State party, and in particular the Canadian judicial system, to adopt a broader interpretation of the scope of the Charter. In view of the growing recognition at the international level of the justiciability of economic, social and cultural rights, he asked whether the State party planned to sign and ratify the Optional Protocol to the Covenant.

23. According to paragraph 11 of the State party's written replies to the list of issues (E/C.12/CAN/Q/6/Add.1), federal and provincial or territorial governments had a legal duty to consult indigenous peoples when contemplating conduct that might adversely affect their rights. The Committee had been informed, however, that prior consultations were rarely conducted under such circumstances. He asked whether the scope of the legal duty was unduly narrow or whether difficulties were encountered in its implementation.

24. Turning to paragraph 19 of the replies, he said that he was pleased to note that budgetary transfers for certain social welfare and health-care programmes had increased by 11 per cent during the period from 2009-2010 to 2014-2015. According to other data sources, however, the current federal budget was the lowest, as a proportion of gross domestic product (GDP), since 1949. He would therefore like to know the ratio of social welfare expenditure to the budget as a whole and to GDP. A marked decline in the ratio could constitute a violation of article 2, paragraph 1, of the Covenant.

25. Canada ranked eighth in the Human Development Index of the United Nations Development Programme (UNDP) but it ranked twenty-third in the Gender Inequality Index. He requested an explanation of the latter figure.

26. **Mr. Pillay** said that the State party's ideological objection to the principle that economic, social and cultural rights were justiciable had, in his view, constituted a fundamental obstacle to the implementation of some of the Committee's previous recommendations. Canadian government officials had actually argued in court that such rights were not justiciable. He therefore joined the previous speaker in asking whether the State party intended to ratify the Optional Protocol to the Covenant.

27. **Mr. Ribeiro Leão** asked whether the activities of Canadian companies operating abroad were monitored to ensure that they complied with the State party's obligations under the Covenant.

28. He enquired about amendments to the legislation applicable to immigrants and refugees and changes in the budgetary funds allocated to relevant programmes and policies since the submission of the report.

29. **Mr. Schrijver** noted that the Government had recently launched an updated Corporate Social Responsibility Strategy, which encouraged companies to reflect Canadian values when operating abroad. He asked whether it could be inferred that the State party accepted the existence of extraterritorial human rights obligations both for Canadian companies and for the Government when it negotiated international free trade and investment agreements.

30. Referring to the decline in Canadian official development assistance (ODA) in recent years, he asked whether the new Government would seek to restore the previous level of ODA and whether it would adopt a human rights approach to the projects that it supported. Canada was not meeting the target of allocating 10 per cent of ODA to sexual

and reproductive health-care information and services. He asked whether the State party intended to remedy that situation.

31. **Mr. Uprimny** asked whether there were any plans to establish an ombudsman to investigate human rights complaints against Canadian companies operating abroad, especially in the extractive industry. He said that the new Government was in an excellent position to advance the recognition of economic, social and cultural rights in Canada by revising its stance on their justiciability. That was especially important because those who did not fully enjoy their rights under the Covenant tended to be minorities and other vulnerable people who, as such, did not wield significant political clout and could hope for change only through the courts.

32. **Ms. Bras Gomes**, referring to paragraphs 22 to 24 of the replies to the list of issues, asked whether the measure adopted in Quebec prohibiting discrimination on grounds of social condition could be invoked in other provinces and, if not, whether federal legislation might be amended to include a similar ban. Welcoming the planned reintroduction of the long-form census, she asked whether the authorities would also be compiling disaggregated data on the various indicators. Noting that municipalities were not accountable to the federal Government, she wished to know how they maintained minimum standards and ensured that Covenant rights were appropriately understood and upheld at the various levels of government.

33. **Mr. Atangana** emphasized that the State party did not appear to have made any progress on the vital issue of the justiciability of Covenant rights. He invited the delegation to comment on any court decisions affecting economic, social and cultural rights.

34. **Mr. De Schutter**, pointing out that international human rights recommendations often went unheeded by the State party, said that the Continuing Committee of Officials on Human Rights was not the answer to the questions and concerns repeatedly raised by the Committee about the implementation of the Covenant. The federal Government could do more, for example by showing greater leadership, supporting a countrywide human rights strategy on economic, social and cultural rights and attaching conditions to federal transfers to the provinces and territories. In that connection, he asked what steps the federal Government intended to take to ensure coordinated implementation of the Covenant and to strengthen the accountability of municipal governments.

35. He wished to know what steps were being taken to move away from non-conventional fossil fuels and to guarantee in practice the right of indigenous peoples to free, prior and informed consent in relation to extraction projects. Noting that the tax system was not progressive, contrary to international standards, he invited the delegation to comment on how the State party reconciled proportionally higher taxes for lower-income brackets with the recent cutbacks in social spending. He asked whether human rights impact assessments had been carried out to ensure that the investment clauses in recently signed trade agreements did not constitute barriers to the full realization of economic, social and cultural rights in Canada. Lastly, he enquired about the municipal reaction to the abolishing of certain programmes, such as the farm-to-cafeteria school meals programme, in order to comply with the procurement clauses found in such agreements.

36. **Mr. Kedzia**, recalling the contribution of two prominent Canadians to international human rights law, urged the State party to ratify the Optional Protocol to the Covenant and to change its position on the justiciability of economic, social and cultural rights. While he understood that the Government preferred not to interfere in economic activities, he pointed out that there were means of ensuring that Canadian businesses did their part to uphold human rights, both domestically and abroad, without curbing their entrepreneurial freedom. He asked how the Government perceived its responsibilities in

that regard under the Covenant and whether victims of human rights violations committed by Canadian firms abroad had access to the Canadian court system.

37. **Ms. Shin** said that there were conflicting images of the State party: on the one hand, it was a country that sponsored international initiatives on women's rights and provided social security to immigrants but, on the other, it had many hidden problems, such as spending cuts and murdered and missing indigenous women. Noting the lack of information on gender equality in the report, she asked what steps were being taken to address structural discrimination, in particular the gender pay gap, and whether there was a comprehensive national action plan on gender-based discrimination. Lastly, she asked why the State party had yet to revise the Indian Act, whose provisions were discriminatory, how discrepancies between the policies of the various levels of government were handled and whether the Government engaged in formal consultations with civil society and took its views into account.

38. **The Chair** invited the delegation to say whether the new Government's policies had had any impact on economic, social and cultural rights. Recalling that Canada had a very good reputation as a model of multiculturalism, he asked whether cultures had to be similar for multiculturalism to be successful.

39. **Mr. Ribeiro Leão** asked whether any up-to-date figures were available on the Aboriginal Skills and Employment Training Strategy. He also asked how the right to social security was envisioned for immigrants and refugees, especially in the light of Bill C-43.

40. **Ms. Bras Gomes** asked what impact the federal Employment Equity Act had had on reducing unemployment among the most affected groups, including the indigenous population, young people and recent immigrants, and how the provisions of the Act applied in the provinces and territories given that they currently covered only 12 per cent of the total workforce. She wished to know why the pay gap and gender segregation in the workplace persisted. Suggesting that a lack of coordinated policies might be to blame, she asked what additional measures could be adopted to overcome such structural inequalities. She asked why social assistance benefits were below the poverty line for all target groups — notably persons with disabilities living in institutions — and across all jurisdictions, and how the State party reconciled the notion of income safety with the clawback of the National Child Benefit. Lastly, she enquired about plans to reinstate the National Council on Welfare or some other institution with a similar mandate.

41. **Mr. Martynov** asked how the unemployment rate of immigrants compared to that of the population as a whole. He also asked what percentage of unemployed Canadians were eligible for unemployment benefit and how current unemployment benefits compared to the level of income considered necessary to ensure a household's sustenance.

42. He wondered whether the new Government had any plans to develop a national childcare system and thus facilitate access to the job market for parents who had no access to some form of regulated childcare. If so, what was the time frame for implementing those plans?

43. He said he would appreciate updated statistics on the employment rate of persons with disabilities, which had been around 49 per cent some five years earlier. In addition, he asked whether women, who were also a vulnerable group, would be added to the groups that, according to the State party's report, were the prime targets of the Government's policies on promoting the employment of persons with disabilities. In the same connection, he asked what the Government was doing to address the situation of the more than 20 per cent of persons with disabilities who, according to reports, were neither employed nor eligible for public assistance. It would also be interesting to know

whether the new Government intended to accede to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

44. The statement that increases to minimum wage rates assisted people in achieving a decent living (written replies, para. 43) struck him as elliptical. He would therefore welcome statistics indicating the extent to which minimum wages enabled workers to bear the cost of living. Information on any plans to address gender imbalances in the low-wage labour markets — women evidently accounted for a disproportionate share of minimum wage earners — would also be welcome.

45. **Mr. Kedzia** asked whether there were any employment plans or strategies tailored to meet the relatively greater needs of young people aged between 15 and 24, in particular those of indigenous or immigrant background.

46. He wished to know whether the passage of Bill C-43, which had repealed the prohibition on imposing minimum residency requirements for eligibility for social assistance benefits, had in fact led to the imposition of such requirements. He also wished to know the reason for the repeal.

47. **Mr. Abdel-Moneim** asked how the Canadian authorities calculated the country's employment rates, which were quite high. Expenditures on social services accounted for an admirably large share of the State party's public spending. He nonetheless wished to know how the Canadian authorities determined that the steps that had been taken with a view to achieving the full realization of the rights recognized in the Covenant had in fact been taken to the maximum of the country's available resources. Could the delegation provide a monetary figure for the maximum of the State party's available resources?

48. **Mr. Mancisidor de la Fuente** asked what indicators the Canadian authorities used to determine whether the minimum wages in the country provided workers with a decent living for themselves and their families. He also asked what measures were planned to facilitate access to labour markets for persons with disabilities, whose employment rate did not appear to be very high.

The meeting was suspended at 4.40 p.m. and resumed at 5.05 p.m.

49. **Ms. Wernick** (Canada) said that the new Canadian Government had made public more than 300 commitments, at least 60 of which were related to economic, social and cultural rights. The Government would shortly table a budget that involved extensive new investment in those areas. The emphasis on multilateralism had been renewed. Replies to Committee members' requests for specific data would be provided in writing in due course.

50. **Mr. Murphy** (Canada) said that the announcement that the Prime Minister's cabinet was equally divided between male and female ministers had been a source of great pride in Canada. A record number of female members of Parliament had also been elected. The Government would be working with the public and private sectors in a bid to ensure that women accounted for 30 per cent of the members of corporate boards by 2019.

51. Initiatives to further narrow the gender gap included plans to launch consultations with provinces, territories and indigenous organizations and peoples on a new framework for early learning and childcare and a public commitment to more flexible working arrangements. Gender equality legislation was in place for federal, provincial and territorial workers.

52. **Mr. Weldon** (Canada) said that, since the announcement in early December 2015 of a planned inquiry into the disappearance and murder of indigenous women and girls, the Minister of Indigenous and Northern Affairs had worked closely with the families of the victims and with indigenous communities to gather information that had not

previously been widely known and views on what the inquiry should cover when it was formally launched in the summer of 2016. The Government viewed the inquiry as one item, albeit an important one, on a broader agenda of reconciliation with indigenous communities.

53. The Indian Act no longer responded fully to the governance needs of First Nations, but reform of the Act, whose broad scope made it highly complex, could not take place overnight. In any event, an ongoing exploratory process, led by First Nations themselves, had generated ideas for reform that had been duly passed on to the Government. In addition, some components of the Act had already been addressed. In 2015, for instance, the First Nations Elections Act had entered into force. It had led to significant changes to the conduct of elections on reserves. An amendment had also been made to the Indian Act as it pertained to matrimonial real property rights. Those two changes were only the beginning of what would ultimately be a more thorough reform.

54. Canada had made known its firm commitment to the principles of the United Nations Declaration on the Rights of Indigenous Peoples. In that connection, environmental assessment legislation as it related to business operations affecting indigenous communities was under review. At a recent meeting of the Third Committee of the United Nations General Assembly, Canada, in a break with past practice, had provided unconditional support for a resolution on the rights of indigenous people.

55. **Ms. Van Nes** (Canada) said that her country's position on extraterritoriality was unchanged. Canada did not believe that it had extraterritorial obligations. The Government nonetheless expected Canadian companies to respect the law in the countries in which they had operations. Laws against corruption and bribery had been enacted, and Canadian companies operating abroad that failed to abide by the principles of corporate social responsibility lost access to official trade advocacy support in foreign markets, and their conduct was taken into account by the country's export credit agency.

56. Official development assistance (ODA) provided by Canada contributed to other States' progressive realization of the rights recognized in the Covenant. In that context, the new Government was committed to redirecting ODA towards efforts to help the poorest and most vulnerable. Such efforts involved programmes to combat the marginalization of vulnerable groups and increase the capacity of recipient Governments to provide such public services as sanitation, health care and education. Under the Official Development Assistance Accountability Act, ODA could be provided only if the competent minister was of the opinion that it was consistent with international human rights standards.

57. **Mr. Murphy** (Canada) said that the Prime Minister was also the minister responsible for youth and that he had pledged to create a youth advisory council composed of young people aged 16 to 24. The new Government had also made a commitment to eliminating provisions that made it difficult for young people and immigrants to obtain unemployment benefits. A youth investment strategy had been developed to help young people transition into the labour market.

58. For the first time in its history, Canada had a minister specifically responsible for all disability issues. Her mandate was to ensure greater accessibility and opportunities for Canadians with disabilities and ultimately to spearhead the passage of a Canadians with Disabilities Act. Facilitating access to the labour market for persons with disabilities remained a priority.

59. **Ms. Filion** (Canada) said that the Government was reviewing its position on the ratification of the international human rights treaties to which it was not yet a party. As economic, social and cultural rights covered a wide array of topics, there were various avenues of redress for violations of those rights, including access to the courts to challenge administrative decisions and to bring discrimination complaints and civil or

tort actions. If, for example, a person believed that a governmental authority had exercised its power in an arbitrary, discriminatory, or otherwise unreasonable way, he or she could file a suit asking the court to review the administrative decision. One such case had involved a challenge to eligibility criteria for income assistance on First Nations reserves. More broadly, the country's independent judicial system reviewed all legislation for consistency with the Constitution and other legislative protections.

60. Persons who believed their rights had been violated had access to various statutory bodies established under legislative programmes relating to economic, social and cultural rights. Those bodies were authorized to investigate and adjudicate cases involving economic and social issues such as compensation for work injuries, workplace health and safety, labour relations and social assistance. In their areas of jurisdiction, those bodies could also rule on the constitutionality of legislative provisions.

61. The Canadian courts had recognized that the international human rights treaties to which Canada was party were relevant to determining the scope of the Canadian Charter of Rights and Freedoms. As part of an ongoing review of litigation strategy, the Attorney General had decided not to seek review of a Canadian Human Rights Tribunal decision in which the failure to fund services on First Nations reserves had been found discriminatory.

62. **Ms. Ravenberg** asked what action the Government was taking to reduce homelessness, what policy it was pursuing to cut mortality rates among the homeless and whether it had investigated the causes of differences in life expectancy between homeless people and the general population. She asked the delegation to provide information on the medical repatriation of migrant farm workers whose employment contracts had been terminated for reasons of health or work-related injury and to explain government policy towards migrant workers in an irregular situation who had no health insurance.

63. **Mr. Pillay** asked whether the Government had evaluated the effectiveness of its poverty reduction strategy, in particular its impact on disadvantaged and marginalized groups such as persons of African descent, indigenous people and women. The criminalization of homeless people by certain municipalities was a shameful practice that should be stopped. In the light of recent rulings by two provincial courts that had found that practice unconstitutional, the federal Government, through the Ministry of Justice, should issue a circular calling on provincial authorities across the country to bring their policies into line with those rulings. The authorities should take steps to ensure that the victims of forced evictions were provided with alternative accommodation and were not made homeless.

64. **Mr. Ribeiro Leão**, referring to paragraph 479 of the periodic report (E/C.12/CAN/6), asked whether any impact assessment had been made of the poverty reduction plan that had been launched in New Brunswick in 2008. In view of reports indicating that poverty rates had risen in recent years, he would like to know whether the policies in force had proved inadequate and whether the newly installed Government intended to introduce any further anti-poverty programmes.

65. **Mr. Uprimny** noted that, despite government efforts to combat discrimination against women, the problem persisted. It would therefore be interesting to know whether the new Government intended to review and update the 1995 Federal Plan for Gender Equality with a view to designing a more comprehensive and structured strategy in consultation with the various provinces and territories and women's organizations. In view of reports that the national anti-drug strategy launched in 2007 had had detrimental effects on the health of drug users because of its punitive nature, he asked whether the Government was planning to change or rethink its approach in that area in order to introduce a more humane policy that would be more consistent with the right to health.

66. **Mr. De Schutter** said that, while he welcomed the announcement by the Government of a plan to develop a food policy to promote healthy living and the production of safe food, he would appreciate more information on the specifics of the plan. In particular, he wished to know whether civil society would be involved in its development, whether it would take into account not only agricultural considerations but also environmental, health, educational and social concerns and whether it would be rights-based, in line with the Committee's general comment No. 12 on the right to adequate food. It would also be interesting to know how the communities receiving support under the Nutrition North Canada programme were identified and how the Government ensured that no eligible community was excluded from the programme. He asked whether the Curbing Childhood Obesity programme had been evaluated, whether Agriculture and Agri-Food Canada had been involved in that programme and what follow-up had been given to it. Lastly, he would like to know what measures were envisaged to put an end to the forced institutionalization of people with disabilities because of the lack of adequate community-based housing and social assistance.

67. **Mr. Abashidze** asked whether the Government would duly consult with indigenous peoples when amending legislation that affected them.

68. **Mr. Atangana** asked whether recently introduced legislation providing for stiffer penalties in cases involving acts of domestic violence had been implemented and, if so, what impact it had had. He would like to know what follow-up had been given to the recommendations made by the Truth and Reconciliation Commission following the national inquiry that had been conducted into missing and murdered indigenous women and girls. He enquired whether the Government had acted upon the recommendation by the Committee on the Rights of the Child that it should repeal section 43 of the Criminal Code, authorizing the use of reasonable force in disciplining children.

69. **Ms. Shin** asked whether the Government intended to ensure that the inquiry into missing and murdered indigenous women and girls was a genuinely national undertaking that would lead to comprehensive policies to address the underlying social and economic issues affecting indigenous peoples in general. She wished to know what action was being taken to overcome regional differences in access to abortion services and to ensure that referrals and alternatives were available in the event of conscientious objection by physicians. She would welcome further information on the status of sex education and, more generally, on reproductive rights and health issues in Canada.

70. **Mr. Mancisidor de la Fuente** said that he would like to know the Government's position on the pollution caused by mercury discharges into rivers and lakes in north-western Ontario. He expressed the hope that the Government would take action to address the situation, which had caused harm to the environment and the health of indigenous peoples living in the area, and thereby signal a more positive attitude on the part of the authorities to the right to water than had been the case to date. He asked whether indigenous languages enjoyed official status within the respective territories of their speakers, in particular in the educational system.

The meeting rose at 6.10 p.m.

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Committee on Economic, Social and Cultural Rights
Fifty-seventh session

Summary record of the 7th meeting
Held at the Palais des Nations, Geneva, on Thursday, 25 February 2016, at 10 a.m.

Chair: Mr. Sadi

Contents

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(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Canada (continued)

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 10 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Canada (continued) (E/C.12/CAN/6; E/C.12/CAN/Q/6 and Add.1)

1. *At the invitation of the Chair, the delegation of Canada took places at the Committee table.*

2. **Ms. Wernick** (Canada) said that the country's federal system meant that, while common goals were addressed at the national level, regional and local governments could respond to local needs and the needs of minority communities. The system was decentralized and non-hierarchical, and the different entities had different competencies. The work remaining to be done in the area of economic, social and cultural rights had been highlighted the previous day by the news that a public health emergency had been declared by the Nishnawbe Aski First Nation. Social and economic challenges could not be solved by governments alone, and Canada benefited from the work of many non-governmental organizations, one of which, the Caledon Institute of Social Policy, had continued the data collection and analysis efforts begun by the National Council of Welfare.

3. **Mr. Murphy** (Canada) said that there was an extensive income security system at the national and local levels that the Government was endeavouring to strengthen, for example by introducing a new form of child benefit, raising by 10 per cent the guaranteed income supplement for older adults with low incomes and reviewing the employment insurance system. That system provided a benefit equal to 55 per cent of average weekly insurable earnings, up to a maximum amount. In 2014, more than 80 per cent of unemployed persons who had paid employment insurance premiums and subsequently lost their job or resigned with just cause had been eligible. There were also supplements for low-income families with children, and the Government had reduced the basic rate of income tax and created a new rate for high earners.

4. Disaggregated data on discrimination were compiled every five years through the General Social Survey. Broad consultation was planned on a new national poverty reduction strategy, which would support existing territorial, provincial and municipal strategies, and the Government planned to spend more than Can$ 133 billion in 2016 and 2017 on social assistance and services, post-secondary education, childcare and early childhood development.

5. **Mr. Lewis** (Canada) said that, in Ontario, children's tax benefits and supplements were not counted as income for the purpose of accessing social assistance. The issue of cutbacks had arisen in 2008, when children's benefits had been consolidated into a single payment, thus separating them from social assistance payments, which had been reduced accordingly. The consolidated child benefit had risen steadily since its introduction and had allowed more parents to access financial support. A supplement for those with teenage children and for single parents had also been created.

6. **Mr. Sandstrom** (Canada) said that the authorities in British Columbia helped the unemployed to find work and increased the incomes of those in need by means of income assistance policies and benefits for persons with disabilities. There was training and support for single parents seeking employment, and child support payments were fully exempt from taxation. Furthermore, earnings exemptions for

families receiving income assistance and earnings exemptions and asset levels for persons receiving disability assistance had all been increased significantly.

7. **Mr. Théroux** (Canada) said that a minimum wage was in force in all provinces in Canada, alongside a federal minimum wage. In Quebec, the minimum wage was revised each year using 13 socioeconomic indicators, thus ensuring that businesses remained competitive, that employees' purchasing power was maintained and that the wage was an incentive for work. The income of most full-time employees who received the minimum wage was above the Low Income Cut-Off.

8. Quebec's Charter of Human Rights and Freedoms prohibited discrimination on grounds of social condition or disability, among others, while providing specific protection for economic, social and cultural rights. Quebec worked with the federal Government and other provinces, municipalities and territories to fulfil the country's international obligations, and all international human rights commitments were subject to prior approval by the Quebec National Assembly.

9. **Mr. Murphy** (Canada) said that homelessness was a persistent problem in Canada, with approximately 150,000 persons using emergency shelters each year. Through its Homelessness Partnering Strategy, the Government provided financial support to urban, rural, indigenous and remote communities to address local needs, and thereby supported a wide variety of projects. It also adopted a "housing-first approach", which involved moving homeless persons from the streets or shelters directly into permanent housing, while helping them to reintegrate into society.

10. **Mr. Lewis** (Canada) said that persons experiencing or at risk of homelessness in Ontario could access housing and programmes across the province. Since 2003, the authorities had made significant investments in affordable rental housing units, as well as improving the existing social housing stock and providing assistance with rent payments. The Community Homelessness Prevention Initiative assisted those experiencing or at risk of homelessness in obtaining housing. An expert advisory panel on homelessness had been established, and its report had led to a range of short- and long-term actions, including efforts to end homelessness by 2025 and the identification of priority areas for provincial actions to prevent and reduce homelessness.

11. **Mr. Sandstrom** (Canada) said that, since 2001, authorities in British Columbia had invested more than Can$ 4 billion in affordable housing and measures to break the cycle of homelessness. Over the next two years, more than Can$ 218 million would be spent on emergency shelter and housing for the homeless, assisting around 13,000 persons. The measures to tackle homelessness included extreme weather response programmes and an outreach programme that linked homeless persons to housing providers.

12. **Mr. Murphy** (Canada) said that the federal Government was developing a strategy that would provide affordable housing of all types, promote house building programmes and make home ownership accessible to more citizens. It would also address taxation, access to capital, the repurposing of federal land and data collection. A key component of the strategy would be a 10-year programme of investment in social infrastructure, prioritizing affordable housing and housing for older adults.

13. **Mr. Campbell** (Canada) said that the federal Government worked with the provinces, territories, civil society and indigenous leaders to address gaps in health-care provision, particularly with regard to indigenous persons. Priorities included improving home-care services and access to prescription drugs and mental health services. It also invested in a range of mental health programmes and suicide-prevention strategies. Support was given to several community-based sexual and

reproductive health programmes, including some focused on maternal and infant health.

14. The Government's drug policy was evidence-based and balanced regulation and enforcement against health. It included measures to reduce harm to drug users and the wider community. The Government planned to legalize, restrict and regulate the use of marijuana, rather than decriminalize it, and would ensure that children could not access the drug. A task force was planned to provide advice on the design of a new system for its sale and distribution, with input from experts on public health, substance abuse and law enforcement. Lastly, reports on the action taken in the area of childhood obesity had been produced and were available online.

15. **Ms. Wernick** (Canada) said that gender parity was a priority for Canada, at both the domestic and the international levels. Gender equality analyses were conducted of its international development programmes and of the impact of all domestic policy and programme proposals.

16. **Mr. Weldon** (Canada) said that the federal Government was committed to addressing, in consultation with First Nations, all the provisions of the Indian Act that discriminated against women, and it had dropped its appeal in a long-standing case concerning those provisions. While the format of the enquiry into missing and murdered indigenous women was not yet known, a round table on the subject, involving federal ministers and provincial and territorial representatives, was currently being held, allowing the ministers to share the findings of their consultations with victims' families and to discuss their role in the enquiry.

17. **Mr. Lewis** (Canada) said that, as an extension of the "It's Never Okay" programme, which addressed sexual violence and harassment, the Ontario government had invested Can$ 100 million in tackling violence against indigenous women and girls. Measures would include support for children, young persons and families; steps to address human trafficking; reforms to the police and justice system; awareness-raising; violence prevention; improved cooperation with First Nations and the federal Government; improved data collection; and research to make it possible to track the problem.

18. **Mr. Sandstrom** (Canada) said that, since the Missing Women Commission of Inquiry had issued its report, the government of British Columbia had implemented significant changes to improve the safety of vulnerable women. The measures taken included providing training for police officers, developing standards for police officers investigating missing persons cases and establishing a fund for the children of the women identified in the report. On the basis of that experience, the government of British Columbia would provide input to the federal Government on the scope and design of the planned inquiry into the disappearance of hundreds of indigenous women.

19. **Mr. Weldon** (Canada) said that, following consultations with the victims' families, provincial governments and First Nations communities, the federal Government would launch its inquiry into the disappearances in the next few months and was committed to taking action on the resulting recommendations. The Government recognized that indigenous peoples had not always been properly consulted with respect to laws affecting them. To address that issue, the relevant ministries were conducting a review of national laws and assessing them in the light of the State's obligation to consult.

20. **Mr. Sandstrom** (Canada) said that the Government took that obligation very seriously and that it consulted First Nations on, inter alia, environmental impact assessments for major projects and operational activities that had an impact on their use of land and resources. He provided an overview of the many agreements that had

been signed between the Government and First Nations, such as on economic and community development and on the sharing of revenue from mining and forestry.

21. **Mr. Théroux** (Canada) said that the Quebec government had adopted guidelines on consulting indigenous peoples about projects affecting them. He cited an agreement signed between the Quebec government and a First Nations community that granted the community the authority to manage vast tracts of public land. That agreement had also established the State's first regional government with equal representation for indigenous and non-indigenous communities. As for equality between women and men, the Quebec government also conducted gender-based analyses of programmes and took legal measures to ensure parity in representation on the boards of directors of companies, particularly State enterprises.

22. **Mr. Weldon** (Canada) said that a large number of representatives of indigenous peoples had attended the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, which had marked the beginning of a strong partnership between the Government and indigenous peoples in addressing the threat of climate change. A First Ministers' Meeting would be held in the coming days on the subject, and First Nations and Inuit communities would be consulted prior to that meeting. Consultations with indigenous peoples in Quebec were currently under way, with the aim of better understanding their communities' vulnerabilities and helping them to develop adaptation plans.

23. The Nutrition North Canada programme was relatively new, and the Government was committed to engaging with all relevant stakeholders to determine its scope and direction. Retailers involved in the programme must provide information on their profit margins, and an advisory board had been established to ensure that the voices of persons living in northern areas were heard. Further information on the results of the programme could be provided in writing. The Government recognized that not all needs were being met by the programme, and the relevant ministry had been tasked with reviewing and reforming it to ensure that its objectives were achieved. The Government planned to hold consultations on its draft food policy, though no time frame had as yet been established.

24. Since the 1980s, the Government had been taking measures to address the problem of mercury poisoning, including by awarding compensation to those affected and monitoring mercury levels in the water supply. Nevertheless, it remained a very serious issue, and one that required collaboration with local communities to resolve. The Government had made a commitment to ensure that, within five years, access to water in First Nations communities would be comparable to that in similar communities off-reserve.

25. **Ms. Wernick** (Canada) said that the State's multicultural society was proof that it was possible for members of society to express their differences without compromising peace and cohesion. Canada was the only country to have enshrined multiculturalism in its legislation, and its citizens had shown broad support for Syrian refugees in the face of the current refugee crisis.

26. **Mr. Scoffield** (Canada) said that immigration was a major public policy issue in Canada and that each year the country received more than a quarter of a million permanent immigrants, including refugees. The Government invested almost Can$ 1 billion each year in integration programmes for immigrants, and more than 80 per cent of immigrants chose to be naturalized as Canadian citizens. The requested data on labour force participation and unemployment rates among migrants would be provided in writing.

27. Legislation adopted in December 2014 had allowed provincial governments to impose a minimum period of residency before certain categories of foreigners would

be eligible for social assistance, but none had yet chosen to do so. All temporary foreign workers enjoyed the same protection as Canadian workers under labour and health and safety legislation. Employers in the agricultural sector must register foreign workers for health insurance and workers' compensation coverage as soon as they were eligible and ensure that they held private insurance during any period in which they were not covered. In the event of an injury, workers must be provided with timely medical care. If their contract was terminated, they had the right to seek a position with another employer.

28. The Government had recently announced that it would restore coverage under the Interim Federal Health Programme to pre-2012 levels, which would involve providing a number of health-care services to refugees, asylum seekers and persons in the process of appealing the rejection of their asylum application. The Government would resettle 25,000 Syrian refugees by the end of February 2016, in addition to its ongoing commitments to refugees from other parts of the world. It would also be investing large sums in additional integration programmes for those refugees and in humanitarian and development assistance for Syrian refugees in the Middle East.

29. **Mr. Kerdoun**, noting that the provincial and territorial governments held exclusive jurisdiction in matters of basic and secondary education, asked the delegation to explain why indigenous students and students of African descent seemed to suffer the most from the problems plaguing the education system. He wished to know whether the State party had followed up on the Committee's previous recommendations in that regard. He asked what percentage of the federal budget was allocated to education and whether it was true that those budget allocations did not cover higher education. He wished to know whether the federal Government provided any oversight of regional governments in education matters.

30. As he understood it, since Canada had not ratified the Convention relating to the Status of Stateless Persons, such persons could not enrol in the education system, and even those who were granted authorization to enrol were still required to pay much higher tuition fees than other Canadian residents. He asked what measures were being taken to address that situation, to reduce the high dropout rate among indigenous students and students of African descent, to provide access to inclusive education for students with disabilities and to ensure that the children of refugees and recent migrants enrolled in school.

31. **Mr. Uprimny** asked what steps the State party intended to take to address the sharp rise in the cost of post-secondary education that had occurred since the 1990s, as it placed a particularly heavy burden on low-income students and their families. He wished to know whether the Government planned to review the policies responsible for disparities in education between the indigenous peoples and the rest of the population and to increase the funding of indigenous education, in keeping with its intention to support the United Nations Declaration on the Rights of Indigenous Peoples. Given the existence of structural discrimination against African Canadians and their disproportionate dropout rate from education, the State party should view the 2015-2024 International Decade for People of African Descent as an opportunity to develop a general strategy for combating such discrimination.

32. **Mr. Schrijver** said that many indigenous peoples in the State party reportedly faced difficulties in obtaining access to freshwater resources, in spite of the rich abundance of such resources in Canada. He asked what strategy the State party intended to develop in consultation with the peoples concerned in order to ensure their right to a safe water supply.

33. **Mr. Martynov** asked whether it was true that the law barred the members of entire professions, such as the medical, dental, architectural, engineering and legal

professions, from joining trade unions. If that was the case, he wished to know whether the new Government was in favour of amending the law so as to allow unionization.

34. **Ms. Bras Gomes** asked what the State party considered to be the territorial extent of its duty to provide protection against violations of the Covenant by third parties and particularly what it saw as its responsibilities with regard to the human rights violations committed in Guatemala by a mining company that was a subsidiary of a Canadian company. In clarification of an earlier question, she said that anything that deprived people who qualified for social assistance of the income safety net referred to in paragraph 62 of the replies to the list of issues was a cause for concern. In respect of the gender pay gap, she had asked why the policies adopted to address that problem had been unsuccessful for so long. Given that certain grounds for discrimination, while they did not figure in the Canadian Charter of Rights and Freedoms or federal legislation, were included in the Quebec Charter of Human Rights and Freedoms, could they be invoked before the courts of other provinces? Lastly, she urged the Government to increase funding and support for African Canadian art, film and culture as part of the International Decade for Persons of African Descent.

35. **Mr. Pillay** said that he would appreciate receiving answers to the series of questions he had asked about the right to adequate housing. Reports indicated that the number of homeless persons in Canada was more than twice the figure provided by the State party, and he recalled that all the recommendations regarding homelessness that had been made by the Committee in its concluding observations in 2006 (E/C.12/CAN/CO/4) were still pertinent. In one Canadian province, homelessness was criminalized; yet a person who set up a tent in a public space to protest homelessness was allowed to do so in the name of freedom of expression. That was evidence that economic, social and cultural rights were not respected on an equal footing with civil and political rights. In order to comply with its Covenant obligations, the State party should treat the right to housing as justiciable and should provide redress to persons who claimed that their right to housing had been violated. Such redress was a core obligation arising from the Covenant and was of immediate effect.

36. **Mr. De Schutter** welcomed the information that a First Ministers' Meeting on climate change had been organized between the federal, provincial and territorial governments and indigenous leaders. However, the adoption of federal omnibus bill No. C-38 on the Income Tax Act had seriously weakened a number of environmental regulations, reportedly as a result of the State party's desire to support oil and gas exploitation. Moreover, the Oceans Act and the Oceans Strategy had resulted in only very few protected marine areas and the federal Government had not recognized the Indigenous Community Conserved Areas of Canada. He asked what measures the Government intended to take to strengthen environmental regulations that took into account the significant human rights impact of climate change in Canada.

37. He asked what means the federal Government had at its disposal to require that provinces and territories assess the human rights impact of the austerity measures they adopted so as to ensure that they did not disproportionately affect women or disadvantaged or marginalized groups. The austerity measures recently introduced in Quebec were evidence of the need to address structural discrimination against women at a more fundamental level and to reinstate the Canada Assistance Plan that empowered the federal Government to require that provincial and territorial governments should give effect to economic and social rights.

38. **Mr. Abdel-Moneim**, noting that, in its general comment No. 15, the Committee had considered the legal bases of the right to water to include articles 11 and 12 of the Covenant, said that he would welcome clarification on whether or not the State party recognized the right to water.

39. **Ms. Shin** said that she had not received answers to her previous questions on conscientious objection in respect of abortion and education concerning the right to sexual and reproductive health. She asked whether the State party planned to formulate a comprehensive national action plan to guide provincial and territorial governments in achieving genuine progress on such issues as gender equality and multiculturalism. She suggested that Canada, Australia and New Zealand might come together around the theme of multiculturalism and serve as examples for other countries of peaceful and harmonious multicultural societies. Multiculturalism involved a genuine commitment to consulting with marginalized groups in order to share the power and resources held by the dominant group.

40. **Mr. Uprimny** asked whether the Interim Federal Health Programme would be reinstated for undocumented migrants. He said he would like to know the Government's position on the *Toussaint v. Canada* case, in which the Federal Court of Canada had held that the health care necessary to life could be denied to undocumented migrants as a way to encourage compliance with immigration law. He asked what recourse was available to a person denied the right to adequate housing before the courts on the grounds that that right was not enshrined in the Canadian Charter. He invited the delegation to comment on whether section 36 of the Constitution Act of 1982 created a constitutional obligation to provide the kind of essential services required by the Covenant.

41. **The Chair** said that the delegation's statement that the Government was committed to protecting the rights enshrined in the Covenant was insufficient for the Committee's purposes. The Committee's jurisprudence had consistently held that the rights recognized in the Covenant were justiciable and, although some could be realized progressively, others were core human rights that were of immediate effect. The Committee's general comment No. 3 on the nature of States parties' obligations could guide Canada in that regard. The quality of health care in Canada had reportedly deteriorated, and clarification would be welcome as to why it did not cover certain contingencies, such as dental problems.

42. **Mr. Mancisidor De La Fuente** (Country Rapporteur) said that persons with disabilities were reportedly excluded from minimum wage protection, as well as from several other labour protection measures, which could be construed as discriminatory treatment. He asked whether the new Government would attempt to remedy that situation.

The meeting was suspended at 11.50 a.m. and resumed at 12.15 p.m.

43. **Mr. Murphy** (Canada) said that Canada had achieved the highest level of tertiary education attainment in 2014, according to the Organisation for Economic Co-operation and Development, and had made significant progress over the previous two decades in reducing the percentage of Canadians who had not completed high school. A variety of mechanisms were currently available to help Canadians finance and repay the costs of post-secondary education, and the new Government had reaffirmed its commitment to creating more opportunities for young Canadians, especially those from low- and middle-income families, as well as to working with the provinces and territories, within whose exclusive competence education fell, to make post-secondary education more affordable. Measures envisaged included changes that would ease the conditions of the repayment assistance plan and increase annual support to the Post-Secondary Student Support Program for indigenous students.

44. **Mr. Théroux** (Canada) said that the provincial ministers of education cooperated with the federal Government through their membership of the Council of Ministers of Education, and the federal Government provided funding for higher and indigenous education. The Quebec government had supported various measures for the

advancement of African Canadians, including the preparation of a publication on their 400 years of contributions to a shared history in Quebec. Between 1995 and 2005, the number of secondary diplomas it had awarded to African Canadian students had increased by more than 20 per cent. Students under the Cree School Board, the Kativik School Board and in the Naskapi School were taught in their community's indigenous language, and the first language of instruction in primary education in all indigenous communities in Quebec, British Columbia and Ontario was the community's indigenous language, while French or English were introduced later. Children with disabilities in Quebec could enrol in school from the age of 4 and could pursue their education until the age of 21 in ordinary classes, specialized classes or specialized schools. In Quebec, professionals, such as lawyers or nurses, who worked for a government enterprise were allowed to join trade unions but those in private practice, as well as managers, were not unionized.

45. **Mr. Lewis** (Canada) said that the Ontario authorities had invested heavily in the education system and had adopted a variety of measures to ensure that children from all backgrounds received a high-quality education. The Aboriginal Education Strategy had been introduced in recent years to improve the educational opportunities for indigenous children and promote First Nations culture and history. The Equity and Inclusive Education Strategy, which contained specific provisions for African Canadian students, also provided training and support to remove any prevailing discriminatory barriers to educational achievement. In addition, efforts had been made to include children with disabilities in mainstream schools and provide them with the necessary learning assistance.

46. **Mr. Weldon** (Canada) said that the Government intended to lift the 2 per cent cap on funding for indigenous communities and would reform the education system so that it better met the needs of First Nations students. The decision to put the First Nations education bill on hold had been taken so that further consultations could be held between the Government and indigenous communities. Local authorities already provided teaching to children living on indigenous reserves and would work with First Nation communities on additional ways to engage indigenous children in education.

47. The Government remained strongly committed to improving housing and living conditions on indigenous reserves and continued to provide generous housing allowances to indigenous communities for any necessary repair or construction work. Concerted efforts had also been made to improve the access of First Nations communities to potable water and sanitation facilities, and it was hoped that safe drinking water would be made available in all indigenous reserves within five years.

48. **Mr. Campbell** (Canada) said that, notwithstanding the few areas requiring minor improvement, the national health-care system could not be faulted and provided exemplary care for all citizens. Some Can$ 34 billion were spent on health care every year, around Can$ 2.5 billion of which was allocated to the provision of health-care services for indigenous persons, particularly those living in remote and rural indigenous reserves. Primary health-care services, including emergency response teams, had been made available to 80 remote indigenous communities over recent years. Regarding access to abortion services, local authorities were duty-bound to ensure access to safe abortion treatment for women who required it and the cost of the procedure was covered by territorial and provincial health-care insurance policies.

49. **Mr. Platt** (Canada) said that the Government had taken decisive action to strengthen its environmental assessment strategies and ensure that all future projects adhered to robust environmental protection standards. Ordinary citizens and environmental experts would also be given the opportunity to voice their opinions or concerns on potential projects in future.

50. **Ms. Filion** (Canada) said that, while it was true that the phenomenon of homelessness was not expressly referred to in the Canadian Charter of Rights and Freedoms or the Canadian Human Rights Act, the national courts had ruled that it constituted a violation of section 7 of the Charter in cases where homeless persons were subject to a serious risk of harm which threatened their right to life, liberty and security of the person. Regarding housing disputes, there were several means of legal redress available to victims: they could bring a claim before the courts for arbitrary or illegal eviction or could file a complaint under federal, provincial or territorial human rights legislation if their housing rights had been violated in other ways.

51. **Mr. Sandstrom** (Canada) said that the Supreme Court of British Columbia had ruled in favour of homeless persons in two cases, namely *Victoria (City) v. Adams* and *Abbotsford (City) v. Shantz*. It had found that sleep and shelter were necessary preconditions to liberty and security of the person pursuant to section 7 of the Canadian Charter of Rights and Freedoms. The court had held that allowing homeless persons to erect temporary shelters overnight represented a reasonable compromise between the needs of homeless persons and the rights of other residents in the cities concerned. For its part, the Government had made a large number of temporary accommodation places available in an effort to provide homeless persons with necessary shelter and support.

52. **Mr. Murphy** (Canada) said that the figure previously quoted of 150,000 homeless persons represented the number of persons that used temporary homeless shelters. The actual number of homeless persons was, in fact, much larger. Persons with disabilities enjoyed the same rights in the labour market as other citizens and were entitled to receive the national minimum wage.

53. **Mr. Scoffield** (Canada) said that migrants, refugees and stateless persons had access to the national health system as long as they were registered with the authorities and had submitted an application to remain in the country. Migrant, refugee and stateless children also had access to education. Furthermore, the Government had taken steps to improve the integration of refugee children into mainstream education by appointing specialist outreach workers in schools to work with the children concerned and their parents.

54. **Mr. Mancisidor de la Fuente**, thanking the delegation for its insightful replies, said that he welcomed the participation of representatives from all levels of government during the dialogue. Moving forward, the State party should spare no efforts in its progress towards the de facto implementation of the Covenant and should ensure that the robust commitments made before the Committee were translated into concrete actions.

55. **Ms. Wernick** (Canada) said she thanked the Committee members for their detailed comments and that her Government would use the Committee's recommendations as a means to strengthen its implementation of the Covenant. Additional information to supplement the delegation's answers would be provided in writing at a later date.

The meeting rose at 1 p.m.

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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record of the 8th meeting

Held at the Palais des Nations, Geneva, on Thursday, 25 February 2016, at 3 p.m.

Chair: Mr. Sadi

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Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Combined second to fifth periodic reports of Kenya

This record is subject to correction.

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The meeting was called to order at 3 p.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Combined second to fifth periodic reports of Kenya (E/C.12/KEN/2-5; E/C.12/KEN/Q/2-5 and Add.1)

1. *At the invitation of the Chair, the delegation of Kenya took places at the Committee table.*

2. **Mr. Karau** (Kenya), introducing the combined second to fifth periodic reports of Kenya (E/C.12/KEN/2-5), said that there had been enormous progress in the implementation of the rights under the Covenant. Despite many challenges in recent years, including terrorist attacks, adverse weather events and diminishing tourism, major legal, institutional and policy measures had been adopted to guarantee basic standards and entitlements. For the first time in the country's history, the Bill of Rights safeguarded economic and social rights and prohibited all forms of discrimination. The main framework for the Covenant rights was Vision 2030, which was implemented through various medium-term strategic plans. The current plan spanned the period 2013-2018 and outlined policies designed to implement devolution, accelerate growth, reduce poverty, transform the structure of the economy and create more and better quality jobs. Since the promulgation of the Constitution in 2010, Kenyan courts had made positive rulings based on the provisions of the Covenant in matters ranging from the right to health and education to the right to housing.

3. The Government had strengthened the human and financial capacity of the Ethics and Anti-Corruption Commission and had taken steps to ensure that anti-corruption and anti-impunity strategies met international standards. Other legislative, policy and institutional reforms included bills on bribery and whistle-blower protection, the strengthening of the Asset Recovery Agency and a draft national ethics and anti-corruption policy. Consultation processes, laws and oversight mechanisms had been put in place to protect the rights of communities affected by extractive projects, and work had begun on the preparation of a national action plan on the implementation of the Guiding Principles on Business and Human Rights. The Government had taken various steps to address past discrimination, including the establishment of the Equalization Fund and the tabling of the Community Land Bill. It had also closed all the camps for internally displaced persons and resettled those housed there in keeping with the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012.

4. The National AIDS Control Council and the HIV/AIDS Tribunal had been established pursuant to the HIV and AIDS Prevention and Control Act, which addressed access to health care and prohibited discrimination against persons living with HIV/AIDS. The Council conducted awareness-raising campaigns throughout the country, while the Tribunal heard complaints of any violations of the Act. Several measures had been adopted to safeguard the right to physical access for persons with disabilities. The National Gender and Equality Commission had been established in 2011 and gender equality was covered in several pieces of legislation. The Government had also made great strides in the protection and care of older persons and children.

5. In an effort to tackle unemployment, the Government had expanded access to credit in order to support entrepreneurs and boost small businesses, had set up a series of targeted funds and programmes, such as the Youth Enterprise Development Fund and the Training of Female Engineering Learners Programme, and had fixed a 5 per cent quota to encourage

the recruitment of persons with disabilities. As a result, the employment rate had risen by nearly 6 per cent. In terms of social security, which was guaranteed under the Constitution, the Government had set up the National Safety Net Programme to strengthen operational systems and expand the coverage of cash transfer programmes. The National Social Security Fund was a contributory scheme that covered workers in both the formal and the informal sectors, and also the self-employed.

6. Although not all the targets of the National Poverty Eradication Plan 1999-2015 had been achieved, progress had nonetheless been made, including the increased enrolment of children in primary school, the introduction of free primary health care and maternity services and the establishment of the Water Services Trust Fund for the provision of water and sanitation services to disadvantaged groups. In addition, several initiatives had been launched to realize the right to housing, especially in informal settlements and for low- and middle-income groups. Measures had also been taken in the health sector to enhance access at the local level, increase the budget, achieve universal health coverage, improve the monitoring of certain diseases and tackle maternal and child health. In the education sector, the Government had gradually increased spending, set up a council to oversee the quality of instruction, fast-tracked the registration of alternative schools, awarded equipment grants and recruited additional teachers.

7. The Government had taken steps, such as the adoption of the Kenya National Commission for UNESCO Act, to protect intellectual property rights in respect of traditional know-how and cultural expression, safeguard intangible cultural heritage and foster diversity. Lastly, he said that, as a result of the recommendations made during the universal periodic review of Kenya by the Human Rights Council, Parliament had adopted the National Policy and Action Plan for the Promotion and Protection of Human Rights, thus setting the stage for the incorporation of a rights-based approach into all aspects of the country's development agenda.

8. **Mr. Dasgupta** (Country Rapporteur) said that there had been a great leap forward in Kenya since the Committee had last reviewed the country's implementation of the Covenant, most notably through the adoption in 2010 of the new Constitution, which incorporated economic, social and cultural rights into domestic law. Questions nonetheless arose regarding the actual implementation of constitutional provisions. For example, noting that sexual intercourse between individuals of the same sex remained an offence under Kenyan law, he asked what the reasons were for such a gross disregard of the provisions of the Covenant. He also asked whether the Government intended to amend section 7 of the Matrimonial Property Act to ensure that both spouses had the right to a share of all the property acquired over the course of the marriage. He further asked why the Community Land Bill, which was designed to give women greater access to land ownership, had yet to be enacted after more than five years.

9. Although an implementation task force had been set up in response to the ruling of the African Commission on Human and Peoples' Rights regarding the right of the Endorois to their ancestral lands, its terms of reference focused on examining the implications of implementation rather than on swift implementation. Accordingly, he wished to know what steps were being taken to ensure that justice was done for the Endorois. Similarly, he asked whether there were plans to grant compensation to the large number of internally displaced persons who had yet to receive any.

10. Referring to the Committee's question in the list of issues (E/C.12/KEN/Q/2-5) about the impact of the Economic Partnership Agreement with the European Union on the enjoyment of economic, social and cultural rights, he pointed out that the State party's written reply skirted the issue. He wondered whether the ban on all generic drugs, irrespective of their medical efficacy, contained in the Anti-Counterfeit Act had been a prior condition to the conclusion of the Agreement. In addition, he wished to know what

plans there were to bring the Act into line with the High Court's ruling that the ban was unconstitutional. Referring to the State party's admission that poverty reduction efforts under the Millennium Development Goals had been only marginally successful, he enquired about how much progress had been made and what steps were planned to improve results.

11. **Mr. Atangana** requested detailed information on cases where the provisions of the Covenant had been invoked before the courts. He asked how the relative rank of ordinary courts and the customary courts in the judicial hierarchy was determined, how successful the efforts to eradicate corruption mentioned in paragraph 22 of the report had been and what the procedure was for recovering money and assets accrued through corruption.

12. **Ms. Bras Gomes** invited the delegation to comment on the assertion by NGOs that, the new Constitution notwithstanding, the Government had not demonstrated good will in its implementation of the rights under the Covenant, instead failing to comply with court orders and being lax in its prosecution of persons suspected of corruption or misappropriation of public funds. Suggesting that part of the problem might be that bills often remained pending before the Parliament for so long that they became obsolete, she asked what held back their enactment. Regarding internally displaced persons, she wished to know what was being done to address the lack of land tenure as a root cause of displacement and how the authorities continued to monitor the needs of those displaced now that the camps had all been closed.

13. **Mr. De Schutter** said that he had received reports that called into question the effectiveness of the Ethics and Anti-Corruption Commission. In addition, according to information provided by the State party itself, several thousand cases a year had been presented to the Commission in recent years, yet in a typical year the Office of the Director of Public Prosecutions had accepted only between 40 and 50 cases. There had also been reports that the executive had interfered with the work of the Commission to ensure that senior public officials escaped prosecution.

14. He understood that, as a member of the East African Community, Kenya, under heavy pressure — for example a unilateral decision by the European Union to impose higher tariffs on imports of Kenyan cut flowers — had recently entered into a region-to-region economic partnership agreement with the European Union. The macroeconomic benefits of the agreement would be real, especially for the State party's export sector, but the key question was whether the inevitable costs associated with trade liberalization would be borne equally. He therefore wished to know whether the likely impact of the agreement had been assessed from a human rights perspective. If so, had those impact assessments been done with the participation of civil society, including smallholders' associations?

15. **Mr. Schrijver** said that he wished to know how the Kenyan authorities envisioned the role, as far as economic, social and cultural rights were concerned, of international bodies such as the African Commission on Human and Peoples' Rights, mechanisms for cooperation between the European Union and the African, Caribbean and Pacific Group of States, and the various United Nations treaty bodies. What added value did the Kenyan Government ascribe to the monitoring functions of those bodies?

16. **Mr. Uprimny** said that he would appreciate information on the implementation or enforcement of court decisions in cases involving economic, social and cultural rights. In the same connection, he asked whether the Government had any plans to repeal or amend special section 21 (4) of the Government Proceedings Act, a law that, if he was not mistaken, dated to the colonial period and made it very difficult, if not impossible, to obtain monetary awards from the Government. He requested specific information on the results of the National Legal Aid and Awareness Programme and asked whether the Government backed the adoption of the National Legal Aid Bill, 2015.

17. That the number of cases of corruption reaching the courts was small was, as Mr. De Schutter had suggested, a significant concern. In that connection, he asked whether it was really the case, as the figures in annexes to the replies to the list of issues appeared to show, that there had not been a single conviction in such cases. How senior were the officials appearing in court to answer to charges of corruption?

18. **Mr. Kedzia** asked whether the delegation could provide information on the extent to which public interest litigation, provided for in the Kenyan Constitution, had been used for the protection of the rights recognized in the Covenant. He also asked whether the State party had a mechanism for prior assessment of the impact on economic, social and cultural rights of the award of concessions for the extraction of natural resources, whether the drafting of the contracts for such awards required the consent and involvement of the communities affected and whether the dispute-resolution mechanisms provided for in those contracts established that human rights, economic, social and cultural rights in particular, were part of the legal framework for the adjudication of any disputes.

19. He would appreciate clarification of paragraph 14 of the replies to the list of issues, in which the State party had noted that internal due processes were ongoing in the run-up to formal ratification of the economic partnership agreement between the European Union and the East African Community. Did those processes include consultations with civil society?

20. Regarding corruption, he asked whether there were any mechanisms in place to monitor compliance with the Code of Ethics for Business, which, according to the State party's report, many Kenyan businesses had signed. He also asked for an explanation of article 21 (4) of the Government Proceedings (Amendment) Bill, 2014, which dealt with liability for the payment of monetary awards by the Government.

21. **Ms. Shin** asked whether the State party intended to ratify the Optional Protocol and whether, as recent reports had noted, counter-terrorism measures had led to the forced closure of a number of human rights NGOs. She wished to know who was responsible for reviewing discriminatory laws and ensuring that new, non-discriminatory laws were adopted and enforced. Which body, for example, was responsible for ensuring that the prohibition on female genital mutilation was enforced?

22. She said that she would welcome information on the differences between the National Gender and Equality Commission and the Kenya National Human Rights Commission. It would be interesting to know, for example, how tasks were divided between the two and whether one was more important than the other.

23. **Mr. Ribeiro Leão** asked what public policies and programmes had been developed to provide the vocational training opportunities mentioned in the State party's report. He also asked whether the State party had managed to respond to the challenge it had acknowledged in paragraph 69 of its report: namely, to find a way not only to create jobs but also to ensure that they met minimum labour standards.

24. **Ms. Bras Gomes** asked whether the decision to establish a programme of support for prospective female engineers had been based on a needs assessment survey and whether the Government had any plans to set up similar programmes for women and girls preparing for employment in other sectors in which they were not traditionally well represented. She wondered whether the authorities had plans to make the Youth Enterprise Development Fund more user-friendly, so that young people could benefit more from it than they had thus far.

25. In relation to just and favourable conditions of work, she asked whether the Kenyan authorities had any plans to seek bilateral agreements with the countries in the Persian Gulf and Middle East that hosted large contingents of Kenyan workers, many of them disadvantaged women. Without such agreements, the problems that inevitably arose were

much harder to resolve. She also asked whether there were any plans to encourage the large percentage of Kenyans working in the informal sector to enrol in and contribute to national social security and health schemes, what was being done to ensure timely and just delivery of cash transfers and whether the authorities were making any efforts to ensure that the cash transfer programme had a growing contribution base.

26. **Mr. Martynov**, commending the State party on its recent adoption of a national employment policy and strategy, said that the delegation of Kenya could be certain that it would be asked to discuss the impact of that policy when it next appeared before the Committee. He asked whether the Government was considering any measures to enforce the constitutionally established quotas for the employment of persons with disabilities and whether it provided vocational training to such persons.

27. He also asked why the share of jobs in the formal sector appeared to be shrinking and whether the Government was considering setting up a non-contributory social protection scheme for workers in the informal sector. He requested clarification of the term "not unionizable", which appeared in paragraph 83 of the replies to the list of issues.

The meeting was suspended at 4.20 p.m. and resumed at 4.50 p.m.

28. **Ms. Chweya** (Kenya) said that the Covenant, which was directly applicable under national law, had been invoked in a number of cases. For example, in *Satrose Ayuma & 11 others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 2 Others*, the court had relied on article 11 of the Covenant when it had granted an injunction restraining the respondents from evicting the petitioners from their homes pending the determination of the case.

29. The National Legal Aid and Awareness Programme, which had been established as a pilot project in six counties, had been successful, although it had faced a number of budgetary constraints. The scheme was due to be rolled out nationally, with its own budget allocation, once the National Legal Aid Bill had secured passage through Parliament.

30. With regard to the ruling of the African Commission on Human and Peoples' Rights in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya*, the Government in 2014 had established a task force with a mandate to study the political, security, economic and environmental implications of implementing the decision and to provide the Government with advice in that regard. The task force had also been mandated to engage with the Endorois, other interested parties and experts on how best to implement the decision. Pending the completion of that process, a number of measures had been taken to protect the rights of the Endorois: they had, for instance, been granted free access to the Lake Bogoria region, and 10 per cent of the proceeds from the Lake Bogoria National Park were used, among other things, to build medical facilities and schools for the community. The Government continued to engage in a dialogue with the Endorois people.

31. The Government, recognizing that corruption undermined the State's ability to ensure the realization of economic, social and cultural rights, had taken a number of measures to tackle the problem. For instance, five cabinet secretaries had been asked to step down because of corruption allegations; a specially established task force had recommended the enactment of anti-bribery legislation and a whistle-blowers' law; and an asset recovery agency had been established. Furthermore, the Office of the Director of Public Prosecutions had instituted proceedings in a number of high profile cases against ministers, cabinet secretaries and other senior public officials. As at June 2015, 96 officials had been charged with various corruption-related offences. Most of the complaints of corruption that were filed with the Ethics and Anti-Corruption Commission were referred by the latter for administrative action or to the authorities concerned, such as the Kenya Revenue Authority. The remainder were either referred to the Office of the Director of

Public Prosecutions or closed for lack of evidence. The relatively low number of convictions handed down was due, among other factors, to limited capacity to prosecute complex cases, delays in the submission of files, preliminary objections by the defence and bottlenecks in extradition and mutual legal assistance. The authorities had, however, taken a number of steps to address those challenges, including the formulation of anti-corruption prosecution guidelines and the decentralization of the prosecution services to the county level.

32. In February 2016, the Government had released 1 billion Kenya shillings to conclude the resettlement of all remaining internally displaced persons; the money would be paid into the accounts of some 5,000 families. As to integrated internally displaced persons, 95,000 households had already received compensation; the remainder would be compensated under the second phase of the initiative, plans for which were in place.

33. **Ms. Njau-Kimani** (Kenya), replying to a question regarding the protection of the rights of communities who signed contracts with natural resource extraction companies, said that the Government had started taking steps to amend the 1904 Mining Act in order to bring it into line with the Constitution, which expressly recognized the rights of those communities in that regard. The proposed amendments emphasized transparency, accountability and community involvement; under the new provisions, mining issues would be dealt with in consultation with the affected communities. Furthermore, the Community Land Bill, which was currently before the National Assembly, went a long way towards addressing issues related to land registered in the name of a community. For example, under the Bill, no contracts would be entered into without the consent of the community concerned. In addition, mining licence holders would be required to undertake an environmental impact assessment and to provide social amenities and employment for local people. Moreover, the communities would not lose their rights to cultivate the land or to use it for grazing.

34. Regarding women's property rights, section 7 of the Matrimonial Property Act provided that such property was vested in the spouses according to the contribution of either spouse towards its acquisition. That provision should be read in conjunction with section 2 of the Act, which defined contribution as meaning either monetary or non-monetary contribution, including domestic work and management of the matrimonial home, childcare and companionship. Furthermore, section 8 recognized that, in polygamous marriages, the contribution of each wife would be taken into account. The Law of Succession Act provided that both men and women could inherit land; similarly the Land Registration Act allowed both men and women to be registered as owners. However, although in law there were no impediments to women owning land, there were a number of practical challenges, in particular of a cultural nature, to the realization of their rights. The Government was therefore working with the private sector and civil society to raise women's awareness of their rights in that regard.

35. Since 2010, Parliament had been busy enacting the legislation identified as a priority in the Constitution, within the time frames set out therein. However, it was expected that the bills still pending before the National Assembly that had been referred to earlier would be passed before the end of 2016. The purpose of the provisions of the Government Proceedings Act that appeared to suggest that it was very difficult to enforce a judgement against the Government was to protect the public interest, in particular by preventing the auctioning off of public assets. However, the Civil Procedure Act provided for a mechanism through which a ruling could be enforced against the Government.

36. **Mr. Atangana** asked what had been the impact of the measures taken to enforce the provisions of the 2015 Protection Against Domestic Violence Act, referred to in paragraph 93 of the State party's replies to the list of issues (E/C.12/KEN/Q/2-5/Add.1). He would also like to know whether the Act had in fact been applied and, if so, he would welcome

information on the number of prosecutions brought and convictions handed down. He asked what action the authorities had taken to put an end to the sexual abuse of children by teachers.

37. **Mr. De Schutter**, referring to paragraph 38 of the replies to the list of issues, said that he would like to know how the notions of "public purpose" and "public interest" were interpreted by the Government and the courts. He asked whether current plans to reform governance of land tenure complied with the ruling in the *Satrose Ayuma* case, in which the court had directed the Government to design an appropriate legal framework for eviction based on internationally acceptable standards. In particular, he would like to know whether the Government's plans were in line with the Basic principles and guidelines on development-based evictions and displacement, the Committee's general comment No. 7 on the right to adequate housing and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which had been endorsed by the Committee on World Food Security in 2012. He enquired whether, beyond protecting security of tenure, there were any plans to move towards land reform, in particular with a view to allowing small-scale farmers to have improved access to land.

38. **Mr. Pillay** noted that only 23 per cent of the demand for new housing units in urban areas was being met and that, as a result, slums and informal settlements, which lacked basic services, were proliferating. People were also denied security of tenure and access to affordable housing. He therefore urged the Government to promote the construction of social housing units.

39. He asked why the Eviction and Resettlement Bill drafted in 2012 had not been enacted. Amnesty International had documented a large number of cases of forced evictions in recent years. He encouraged the State party to impose a moratorium on forced evictions pending enactment of the bill.

40. He noted that 44 per cent of the population lived below the poverty line and that the worst affected population groups were child workers, women, people with disabilities and inhabitants of arid and semi-arid areas. He asked whether the State party was contemplating the introduction of anti-poverty measures that would target vulnerable groups.

41. **Ms. Ravenberg** said that the Committee had been informed that 4 per cent of the Kenyan national budget had been allocated to the health sector in the 2014/15 financial year. The Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases set a minimum standard for health sectors of 15 per cent of States' annual budgets. She requested updated figures on public funding of health-care services.

42. She said that the Committee welcomed the enactment of the Prohibition of Female Genital Mutilation Act and the establishment of an anti-FGM board. It appeared, however, that the practice was still widespread. According to a country profile published in May 2013, the prevalence at that time had been approximately 27 per cent. For example, the practice was conducted in the Transmara area of Narok County during the festive season when schools were closed. Some physicians reportedly performed post-delivery female genital mutilation. She enquired about the steps being taken by the State party to implement the Prohibition of Female Genital Mutilation Act, to combat the deep-rooted culture from which the practice stemmed, and to provide support services to victims.

43. **Mr. Ribeiro Leão** asked whether the State party considered that the international assistance it received in tackling the problems relating to high poverty levels listed in paragraph 112 of the report was effective.

44. **Mr. Uprimny** drew attention to major disparities in enjoyment of the right to health in the State party. Skilled medical personnel were involved in only 12 per cent of deliveries

in Wajir County, compared with 94 per cent in Nyeri County. The disparities were reportedly due to the lack of a regulatory framework for the country as a whole. He asked whether the Government intended to expedite the enactment of the health bill that was currently before Parliament. Lack of public expenditure on health-care services had a particularly severe impact on low-income families.

45. Criminalization of homosexuality undermined the right to sexual health. He was dismayed by the State party's rejection of the recommendation concerning decriminalization of same-sex relations issued by the Universal Periodic Review Working Group.

46. He asked whether abortion was a criminal offence even in cases of rape and, if so, whether the State party contemplated an amendment to the Penal Code.

47. As the State party had failed to answer the Committee's question concerning measures taken to address the high maternal mortality rate, he would appreciate any information that the delegation could provide on the subject.

48. **Mr. Kedzia** enquired about progress made in implementing the 2011 Prohibition of Female Genital Mutilation Act and about the activities undertaken by the board that had been established to combat the practice. The Act focused on legislative and penal measures and only one subparagraph addressed the need to raise public awareness of the adverse impact of female genital mutilation. As criminal legislation was insufficient in itself to combat a phenomenon that was contrary to human dignity, he wished to know whether any additional action was being taken.

49. With regard to the availability of medicines to prevent mother-to-child transmission of HIV/AIDS, he enquired about measures taken to help disadvantaged and marginalized groups to obtain them.

50. The Committee had received disturbing information about cases in which pregnant women who were unable to pay for delivery had been detained by hospitals following the birth. Women living in slums therefore tended to deliver at home. He enquired about the scale of the problem and the measures being taken to remedy it.

51. **Ms. Shin** said that the State party had failed to answer the Committee's question concerning measures taken to combat polygamy. She asked whether it was prohibited or tolerated and enquired about its prevalence.

52. She requested information on court cases under the Matrimonial Property Act 2013 in which women's contributions in terms of housework, child care and companionship had been recognized for the purpose of allocating matrimonial property.

53. Table 1 of the annex to the State party's replies to the list of issues showed water coverage projections in urban and rural areas. She asked whether the ambitious targets for 2015 had been achieved, namely 80 per cent for urban areas and 75 per cent for rural areas. The Committee had been informed that in areas where water was not available, women and girls were often required to travel a considerable distance to fetch water and sometimes faced security risks. She asked whether any measures were being taken to address that problem.

54. She said that women should not be punished for mother-to-child transmission of HIV/AIDS but should be provided with support.

55. **Mr. Kerdoun** said that he welcomed the affirmative action taken by the State party on behalf of persons with disabilities through its investment in educational facilities. He also commended the adoption of the Basic Education Act in 2013. The policy documents entitled "Aligning Education and Training to the Constitution of Kenya" and "Kenya Vision 2030" provided important guidelines for reform and institution-building. However,

shortcomings such as poor quality of tuition, lack of regulation, difficulty of access for children with disabilities and gender disparity persisted. For instance, many girls tended to drop out of school owing to early marriage or pregnancy. He asked whether the State party believed that the measures it had taken to date were sufficient to tackle those problems. He was particularly interested in hearing about new initiatives to promote the right to education for vulnerable children. He trusted that the State party would continue to allocate resources to programmes aimed at providing young people with the skills they required to perform effectively in a globalized economy. He enquired about action to facilitate access by low-income children to education in general and by adolescents to tertiary education.

56. **Mr. Dasgupta,** referring to the statement in paragraph 105 of the written replies to the list of issues, that the amendments to the Children Amendment Bill 2014 had been too numerous and that a new statute was therefore being drafted, requested more details concerning the draft legislation. As to the National Policy on the Elimination of Child Labour approved by the Cabinet in 2015, he enquired about the scale of the problem and any progress achieved in addressing it to date.

57. **Mr. Abashidze** asked whether there was any legal instrument that established a strong link between the recognition of cultural rights and the recognition of indigenous peoples. He wished to know, for example, how such a mechanism might apply in the case of the Lamu Port Southern Sudan-Ethiopia Transport Corridor (LAPSSET) project.

58. **Mr. Uprimny** said that the number of private primary schools in Kenya had increased from 380 to about 9,000 in the last 15 years. In many cases, however, they were low-cost profit-seeking establishments that failed to meet quality standards owing to a lack of regulatory vigilance by the State. The authorities reportedly planned to approve quality guidelines for such establishments. He enquired about their implementation and about plans to increase public expenditure with a view to providing high-quality public education for all students.

The meeting rose at 6.05 p.m.

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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record of the 9th meeting
Held at the Palais des Nations, Geneva, on Friday, 26 February 2016, at 10 a.m.

Chair: Mr. Sadi

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Combined second to fifth periodic reports of Kenya (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

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The meeting was called to order at 10 a.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Combined second to fifth periodic reports of Kenya (continued) (E/C.12/KEN/2-5; E/C.12/KEN/Q/2-5 and Add.1)

1. *At the invitation of the Chair, the delegation of Kenya took places at the Committee table.*

2. **Ms. Sinyo** (Kenya) said that the consultation required by law prior to ratification of treaties or international agreements was essential because such instruments became part of domestic legislation upon ratification. Hence consultation would take place with the agricultural and industrial sectors, Members of Parliament and other stakeholders before the Economic Partnership Agreement was concluded.

3. The Persons with Disabilities Act, which had been enacted long before the State party's ratification of the Convention on the Rights of Persons with Disabilities, emphasized the importance of economic and social rights, establishing a 5 per cent quota for the employment of persons with disabilities and incentives for businesses to respect that quota. The Act was being brought into line with the Convention and the Constitution, and its approach was now rights-based. In that connection, the National Council for Persons with Disabilities was raising awareness of the right to employment and compiling data on the qualifications held by persons with disabilities in order to offer them appropriate work placements. Affirmative action measures had been adopted, and a large number of persons with disabilities had been elected to the National Assembly and county assemblies in the 2013 elections. Persons with disabilities were also encouraged to access the court system so as to assert their right to non-discrimination.

4. **Ms. Onyancha** (Kenya) said that the inclusion of drugs in the Anti-Counterfeit Act had been an oversight; the Act had been reviewed and the provisions relating to drugs removed. Drugs were regulated by the Pharmacy and Poisons Board, and the use of generics was permitted. Most social security schemes in Kenya were contributory, but there were plans to make the National Hospital Insurance Fund inclusive by removing the need for contributions. Workers in the formal sector benefited from a Government-funded social security scheme, and their contributions therefore helped to provide services for those unable to contribute. A national health insurance bill would soon be passed by Parliament; it would replace out-of-pocket payments for health care with insurance schemes. There were also calls for the Government to match contributions so as to fund services for those unable to contribute, who were also aided by a health insurance subsidy, the Constituency Development Fund and measures at the county level.

5. **Mr. Kottut** (Kenya) said that the mistreatment of Kenyan domestic workers in the Middle East was a significant problem. The Government had conducted a fact-finding mission to the relevant countries, which had resulted in a report detailing the issues facing migrant workers. A return visit to Kenya by authorities from those countries had taken place in order to discuss the matter further and a temporary ban had subsequently been imposed on the recruitment of Kenyans to some countries. Additionally, recruitment agencies must be vetted by the Government, and a committee of stakeholders had been established to find a workable solution. Agreements with countries in the Middle East were being negotiated, workers were required to receive clearance before they left Kenya, and all domestic workers already abroad had to register with their local embassy. A study of the problem had compared the situation of domestic workers with Kenyans working in other

sectors in the Middle East and discovered that many domestic workers had low levels of education and did not understand their contracts. Nevertheless, it should be noted that not all domestic workers in the Middle East were mistreated.

6. The aim of the Economic Partnership Agreement was to increase economic growth, thereby boosting employment, Government revenue and the provision of services benefiting farmers. However, negative effects on small-scale farmers were also expected, and the Government planned measures to mitigate them, including restrictions on the number of agricultural products from the European Union qualifying for trade liberalization and the negotiation of simplified rules of origin that would benefit small-scale Kenyan farmers. A study into the impact of the Agreement on Kenyan farmers had found that marginal losses would be offset by benefits arising from economic growth, including improved welfare.

7. **Mr. Kihwaga** (Kenya) said that the Government's holistic approach to job creation included free primary education and the introduction of vocational training programmes. Jobs were being created at a higher rate in the informal sector than in the formal sector. The Government's ability to affect job growth was limited to pursuing policies that enabled their creation and promoting regional integration. Provisions relating to the minimum wage prioritized non-unionized workers because they were more vulnerable to exploitation; that was not to say that unionized workers were not protected. The Office of the Attorney General was conducting a comprehensive review of the international agreements that might be ratified by Kenya, including the Optional Protocol to the Covenant.

8. **Ms. Njau-Kimani** (Kenya) said that the former National Human Rights and Equality Commission had been split into three commissions, one of which was the National Gender and Equality Commission. The commissions worked with each other and held equal status, although each had a different mandate. Only one, the National Commission on Human Rights, was accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The only courts in Kenya that could be considered customary were the Kadhi's Courts, which held the same rank as magistrate's courts. As such, they could not contradict the rulings of superior courts, because appeals against their decisions were dealt with by the High Court. Furthermore, they were limited to hearing cases relating to personal laws where all parties were adherents to Islam and submitted to the court's jurisdiction.

9. Research conducted by the Ministry of Education had identified several professions in which women were poorly represented. While women had subsequently overtaken men in many of those professions, that had not been the case in engineering. The Government had therefore launched pilot schemes to train female engineers living in arid and semi-arid regions, where many oil and mineral deposits had been discovered. The Government also planned to expand those schemes to cover other areas.

10. **Ms. Chweya** (Kenya) said that female genital mutilation was an age-old practice that was firmly entrenched in some Kenyan communities. To combat the practice, the Government had passed legislation criminalizing it and establishing substantial fines as punishment, and the Office of the Director of Public Prosecutions had launched 99 prosecutions against perpetrators. Of those, five had resulted in convictions thus far. The reason there were so few convictions was because witnesses, including victims, were very reluctant to appear in court. Education and awareness-raising measures to create behavioural change were being coordinated by the Anti-Female Genital Mutilation Board, which had been established for that purpose. Survey results indicated that the prevalence of the practice was slowly but steadily declining.

11. Polygamy was a traditional cultural practice in Kenya that predated the introduction of civil and Christian marriages, and it was an acceptable practice that was provided for in

customary and Muslim law. Prior to the passing of the Marriage Act, customary marriages had not been registered, which had left women vulnerable in matters of inheritance and divorce. Under the Act, all marriages must now be registered. The Act did not, however, allow a person in a polygamous union to later contract a monogamous marriage. Several pieces of legislation had been enacted to criminalize domestic violence and provide support to victims. In addition, gender desks had been set up in all police stations, where victims could receive counselling from specially trained officers. A gender-based violence working group conducted awareness-raising activities and trained police officers on how best to implement the relevant legislation. Recent studies showed a drop in the number of domestic violence cases. Statistical data on prosecutions of such cases would be provided in writing.

12. As required under the Constitution, the Government had enacted several pieces of legislation to protect indigenous peoples' intellectual property and traditional knowledge of genetic resources. The State had also ratified several international treaties on the conservation and sustainable use of genetic resources and had drawn up regulations governing access to those resources and benefit sharing. Lastly, in the 2014/15 fiscal year, the Ethics and Anti-Corruption Commission, in its efforts to fight corruption in the country, had managed to trace property worth a total of 3.8 billion Kenya shillings (K sh). Further statistical information in that regard would be provided in writing.

13. **Ms. Gathagu** (Kenya) said that the housing bill was currently being reviewed with a view to bringing it into line with the Constitution. As part of that review process, proposals had been made to adopt cheaper, modern technologies that would make housing more affordable. Through the Kenya Informal Settlements Improvement Project, the infrastructure in slum areas had been enhanced, improving access to electricity, water and even sewage systems. Many police officers and civil servants had been able to purchase their own land through a special scheme that gave them access to subsidized mortgages. The establishment of the Housing and Urban Development State Department was an indicator of the Government's commitment to improving housing in the country.

14. The Government had complied with the judgement issued by the High Court in the case *Satrose Ayuma and 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 2 Others*. The evictions bill had been combined with another bill in accordance with the Constitution, which envisaged the consolidation of legislation submitted to Parliament. All provisions of the evictions bill had been retained in the consolidation process. Nevertheless, concerns about the consolidation had been raised and were currently being considered by Parliament. With regard to security of tenure, while a large number of land titles had been issued to individuals, the same could not be said regarding the registration of communal land. A community land bill, which would resolve that problem, was currently under consideration by the General Assembly and was expected to be adopted by the end of 2016.

15. She provided three examples of legal cases in which the Matrimonial Property Act had been applied. In those cases, the courts had recognized that a wife's non-monetary contribution to the household constituted an indirect contribution to the purchase of the matrimonial property. The targets set with regard to providing access to clean drinking water had been met and even surpassed. Currently, 82 per cent of urban households and 57 per cent of rural households had access to clean water. However, only 45 per cent of urban and 14 per cent of rural households had access to safe piped water.

16. **Ms. Sinyo** (Kenya), recognizing that child labour was a serious problem in the country, said that, despite the fact that the Children's Act amendment bill had been shelved and that a new statute had not yet been finalized, children in Kenya remained protected from child labour under the Children's Act of 2001 and various labour laws, which were still operational. In addition, Kenya had ratified the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182) and the ILO Minimum Age

Convention, 1973 (No. 138). A number of civil society organizations were working to protect children, and the Government was working in close collaboration with ILO to raise awareness about the worst forms of child labour, with positive results. The Ministry of Labour and the Federation of Kenya Employers were making great efforts to ensure that children stayed in school. Labour inspection officers were trained to ensure that children who were 16 years of age or older and employed were not subjected to conditions that might jeopardize their health or their physical or mental development. Awareness-raising efforts were being made to ensure that children benefited from the early childhood education provided by the county governments and the free primary education provided by the central Government, and that they did not leave school in order to work.

17. **Ms. Onyancha** (Kenya) said that a number of specific measures had been taken to eradicate poverty, including by increasing school enrolment rates and ensuring access to primary health care and safe drinking water. For example, in 2003, the Government had declared that primary education would be free of charge, and the Basic Education Act had made it illegal to deny a child access to education. As a result, enrolment in primary education had increased tremendously to more than 12 million as at 2015. The provision of primary education was one of the most important means of reducing future income insecurity. With that in mind, the Government was raising awareness among parents and children about the importance of education. In arid regions inhabited by nomads, boarding schools for both girls and boys had been established at the primary level to enable children in nomadic households to attend school. The Basic Education Act ensured that girls who dropped out of school because of pregnancy or for other reasons were allowed to return to school. In addition, special scholarships had been set up for girls who excelled in their studies.

18. Funds had been established to encourage entrepreneurship among women and young people and to enable them to start small businesses. A number of dams and ponds had been built to improve access to clean water, so that women could spend less time travelling to fetch water and could use that time in more productive ways. Increased female representation in the National Assembly meant that women were better able to participate in decision-making that affected them.

19. Primary health care was provided free of charge, and the number of primary health-care facilities in rural areas had been increased. While the Government had not reached its stated goal of devoting 15 per cent of the State's gross domestic product (GDP) to health care, allocations for health care had been increasing, and the true figure was not as low as 4 per cent. To obtain an accurate figure, it was necessary to count both the allocations to the Ministry of Health and the allocations made at the county level, which together totalled roughly 7 per cent of GDP. In addition, government funding for health care was supplemented by significant funds from donors.

20. The adoption of the health bill had been delayed by the enactment of the Constitution in 2010 and the need to align it with constitutional provisions on health, as well as by the need to obtain the input and proposed amendments of the counties. It had been approved by Parliament on second reading, and it would be enacted pending its approval on third reading. The adoption of the bill was eagerly awaited, as it would address many outstanding health issues and would, for the first time in Kenya, provide for the regulation and mainstreaming of traditional and alternative medical practices. In terms of health-care financing, the Government had an ambitious plan to move away from the current system of out-of-pocket financing towards an insurance-based system. In response to whether the prohibition of same-sex sexual acts had an impact on homosexual persons' access to health, she said that health-care professionals treated patients without regard to their sexual orientation.

21. Under the 2010 Constitution, abortion was not permitted unless, in the opinion of a trained health professional, there was need for emergency treatment, or the life or health of the mother was in danger, or if permitted by any other written law. Guidelines had been prepared for medical professionals who performed abortions under those conditions. In order to address the high maternal mortality rate, the Government had introduced a national reproductive health programme, which had increased the number of deliveries attended by skilled health-care staff. In addition, it had launched the "Beyond Zero" campaign, which was aimed at eradicating maternal and child mortality and mother-to-child transmission of HIV/AIDS through the provision of services to women and children by means of mobile clinics.

22. **Mr. Kedzia** said that he would appreciate an account of the access to Internet enjoyed by various social groups throughout the State party. In particular, he asked what steps the Government was taking to make the Internet available to disadvantaged and marginalized groups and to address the needs of those who were likely to have some difficulty using it, such as older generations.

23. **Mr. Dasgupta** sought clarification on the national park revenues that had been awarded to the Endorois people and asked whether the Endorois also enjoyed access to their ancestral lands, including to salt licks for their cattle. He wished to know how much of the targeted 50 per cent reduction in the number of persons living below the poverty line had actually been achieved. Given that only 45 per cent of persons in urban areas had piped water, he asked how the remaining persons, especially those living in slum areas, obtained their water.

24. **Ms. Shin** requested clarification of reports that the counter-terrorism efforts carried out by the Government had resulted in the closing down of certain NGOs. She asked which ministry was responsible for gender equality; how the Government ensured gender equality throughout the country; and how it reconciled the inherent contradiction between the State party's promotion of a gender equality policy and the fact that polygamy was still permitted under the law. She invited the delegation to comment on the case of a doctor who had reportedly provided necessary post-abortion care only to be convicted as a result and asked what steps the Government was taking to prevent such incidents and to obviate the need for abortion, for instance through sex education in schools.

25. **Ms. Bras Gomes** requested a brief account of the obstacles that the State party had encountered in implementing the government cash transfer system and the National Policy on Occupational Safety and Health.

26. **Mr. Uprimny** said that he had received reports to the effect that important judicial decisions, including several relating to the provision of compensatory redress to claimants, had still not been implemented several years after they had been handed down. Since the problem was reportedly attributable to specific provisions of the Government Proceedings Act, he asked whether the Government would support a reform of those provisions. He reiterated the questions he had asked earlier concerning the number of State officials who had been prosecuted and convicted for corruption and the importance of regulating private education.

27. **Mr. Pillay** asked for an explanation as to why the water bill 2012, which provided that every Kenyan had the right to safe water and adequate sanitation, had not yet been adopted by Parliament. He wished to know what action the State party planned to take in order to monitor and enforce the official tariff to be practised by water kiosks and private water service providers with a view to eliminating the current situation in which the poor paid exorbitant prices for water and, in some cases, even more than those with piped water systems. He wished to know what steps the Government was taking to ensure that the burden of collecting water in jerrycans that was imposed on girls or women did not hinder

their access to education or employment and that the lack of adequate sanitation facilities did not prevent girls from attending school or expose girls and women to sexual violence, especially owing to the lack of effective policing in slum areas. He wished to know what measures, including the application and enforcement of legislation, the State party had taken to require landlords to construct toilets, latrines and bathrooms in the immediate vicinity of each household and to ensure that State authorities complied with their legal responsibility to provide essential services, including water and sanitation, to all city residents without discrimination.

28. **Mr. Atangana** asked what procedure was used to recover corruptly acquired assets and whether any statistics had been gathered on how much the State had already recovered. He reiterated a question put earlier concerning abuses committed against children in school, particularly girls, and the relationship between those abuses and the high rate of teenage pregnancy.

The meeting was suspended at 11.50 a.m. and resumed at 12.10 p.m.

29. **Ms. Onyancha** (Kenya) said that the Government aimed to reduce the national maternal mortality rate to 150 deaths per 100,000 live births by 2017. It had also taken steps to ensure that mothers had access to the appropriate medicines required to prevent mother-to-child HIV transmission. State maternity services were provided free of charge. However, women who gave birth in private hospitals were liable for the full cost of their treatment. In regard to abortion, the Government was not aware of the case involving a doctor who had been imprisoned for providing post-abortion treatment. On the contrary, it had taken measures to facilitate access to such follow-up services. As for the Anti-Counterfeit Act, it had been amended to exclude medicines, which would in the future be regulated by the proposed Kenyan Food and Drug Authority.

30. **Ms. Chweya** (Kenya) said that the local authorities had paid 10 per cent, or around K Sh 7 million, of the proceeds from the park to the Endorois in 2015. The payment did not form part of the implementation of the ruling of the African Commission on Human and Peoples' Rights in the case of the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* and was in addition to the basic financial support provided by the Government to indigenous communities. The local authorities had also provided access points to the lake for the Endorois so that they could freely practise their cultural traditions.

31. The Marriage Act stipulated that only persons aged 18 or above could marry, after which age they were free to choose any form of marriage, including polygamy if they so wished, as long as they registered their union with the authorities. As to corruption, the Office of the Director of Public Prosecutions had prosecuted numerous high-profile perpetrators, including Members of Parliament and senior officials. By 2015, 96 State officials had been charged with various corruption-related offences. However, only three to four persons to date had been sentenced owing to the complex nature of the cases and the high turnover of investigators. To address the low conviction rate, the Government had prepared anti-corruption prosecution guidelines and had provided additional training to investigators and officials working on such cases.

32. **Ms. Sinyo** (Kenya) said that the 2001 Children's Act and 2006 Sexual Offences Act prohibited child abuse and child sexual exploitation and set forth numerous protection measures. The Government had established the National Council for Children's Services and eight child protection centres across the country to identify and support vulnerable children. It had also adopted the Basic Education Act which prohibited child abuse by teachers and had introduced community surveillance schemes. In addition, a round-the-clock telephone hotline had been made available for children and members of the public to report cases of child neglect or abuse. The Government had also improved the juvenile

justice system and made courts more child-friendly. It had worked closely with the police to ensure that officers handled criminal cases involving children sensitively and held children separately from adults.

33. **Mr. Kottut** (Kenya) said that all levels of government conducted gender mainstreaming activities. At the national level, every ministry had its own gender mainstreaming department in addition to access to the National Gender and Equality Commission. The local authorities also had their own gender mainstreaming divisions. The Government conducted regular reviews of each Ministry's performance, including its work on gender issues.

34. **Ms. Gathagu** (Kenya) said that the Government aimed to provide clean piped water to every household in the country. Currently, around 45 per cent of urban households and 14 per cent of rural households had access to the national water supply network. Efforts had been made to increase the availability of potable water, particularly in remote and rural areas, and additional clean water sources had been provided within a closer proximity to rural communities. The amended 2002 Water Act was before parliament for adoption. There was a backlog in bills pending consideration, but it was hoped that the amended Act would be enacted before the end of 2016. As to sanitation facilities provided by landlords, the Landlord and Tenant Act clearly stipulated that landlords were required to provide adequate water and sanitation facilities for their tenants.

35. **Ms. Njau-Kimani** (Kenya) said that the Government remained committed to upholding high educational standards in all schools and had established the Education Standards and Quality Assurance Council to ensure that both public and private students received a high-quality education. Given the voluntary nature of the existing Code of Ethics for Business, the Government intended to develop a national action plan on business and human rights to support the implementation of the Code in line with the United Nations Guiding Principles on Business and Human Rights. It had also established an occupational health and safety fund in addition to the occupational health and safety framework to ensure the safety of workers. Similarly, steps had been taken to introduce an occupational diseases authority and fund to support persons diagnosed with illnesses or injuries relating to their occupation. Regarding social protection, the Government had adopted policies to strengthen the national social protection mechanism and to ensure that vulnerable persons received the appropriate support and assistance on a timely basis.

36. The national NGO Coordination Board was responsible for setting the official registration criteria that must be met by NGOs. In the event that NGOs failed to meet those standards, their official registration would be withdrawn, which bore no relation to the existence of ongoing anti-terrorism measures. According to 2015 data, around 54 per cent of the population had access to the Internet, including in remote and rural communities. The Government had also increased the number of national services and official application processes available online. Further information on the number of illiterate and older persons who had access to the Internet would be provided in writing at a later date.

37. **Mr. Dasgupta**, thanking the delegation for its candid and constructive replies, said that he welcomed the marked progress made by the State party towards the implementation of the Covenant at the legal and legislative level. Further efforts would be required to ensure that the remaining bills relating to economic, social and cultural rights pending before Parliament were adopted without undue delay.

38. **Ms. Njau-Kimani** (Kenya) thanked the Committee members for their detailed comments and said that the recommendations and observations emanating from the dialogue would help the Government to translate the provisions under the Covenant into reality.

The meeting rose at 12.45 p.m.

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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record of the first part (public)* of the 10th meeting
Held at the Palais des Nations, Geneva, on Friday, 26 February 2016, at 3 p.m.

Chair: Mr. Sadi

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* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 3 p.m.

Miscellaneous matters

Informal meeting with States

1. **The Chair** said that he was pleased to welcome the representatives of States to the informal meeting, which was designed to serve as a forum where participants could engage in a free and frank dialogue on the items that he wished to propose for discussion, namely General Assembly resolution 68/268 and the use of additional meeting time, reporting by States parties and the simplified reporting procedure, the Optional Protocol to the Covenant and the working group on communications, and general comments and other substantive work.

2. The General Assembly, in its resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, encouraged the human rights treaty bodies to offer to States parties for their consideration simplified reporting procedures. It also strongly condemned acts of intimidation and reprisals against individuals and groups for their contributions to the work of the human rights treaty bodies, and it was in that connection that, in 2015 at their twenty-seventh annual meeting, the chairs of the human rights treaty bodies had endorsed a set of guidelines against intimidation or reprisals, known as the San José Guidelines; it was for the individual treaty bodies to decide whether to act on the specific recommendations made at the meeting, since the chairs were not mandated to make commitments on their behalf. In addition, the resolution provided for additional meeting time, partly to help deal with the backlog of reports. However, in his view the current allowance of six hours of meeting time for the consideration of periodic reports was insufficient and adversely affected the quality of the process.

3. **Ms. Bras Gomes**, referring to working methods, said that the Committee had begun, on a pilot basis, to prepare lists of issues prior to reporting. The possibility of reporting under the simplified procedure had been offered to States parties that were in at least the fourth reporting round and were scheduled to report in 2017. To date, three States had accepted the offer: Bulgaria, New Zealand and Spain. The Committee hoped that the new procedure would lead to a more focused dialogue with States that had been reporting regularly and would enable both the Committee and States to concentrate on key issues related to the implementation of a certain number of rights. The procedure would be evaluated after the pilot phase. The views of States would be most welcome throughout the process.

4. Regarding overdue reports, a number of States had taken advantage of the capacity-building programme established pursuant to resolution 68/268 in order to support States parties in fulfilling their treaty obligations. Government officials in those States had received training to enable them to join a network of State officials within their subregion. The Committee looked forward to the 29 States parties with overdue initial reports engaging with the capacity-building programme and complying with their reporting obligations.

5. **Ms. Zolotova** (Russian Federation) said that she would like to thank the Committee for convening the meeting and providing member States with the opportunity for discussion. Regarding the pilot project for the simplified reporting procedure, she asked whether the Committee could explain how the list of issues prior to reporting would be structured. In particular, she would like to know whether States would have the opportunity to inform the Committee about developments that they considered to be relevant and important and whether there would be any limit on the number of questions asked.

6. **Mr. Gamaleldin** (Egypt) said that feedback about the simplified reporting procedure received by his Government from other States had been quite mixed: some States had found it a very positive experience, while others had stated that it was not the fairest way of facilitating a dialogue with a treaty body. His Government preferred therefore to reserve its position in that regard until more extensive feedback had been collected. He would be interested to know whether the Committee had in mind a time frame for eliminating the backlog of reports. As to the San José Guidelines, his delegation, like others, had had occasion to express a number of concerns regarding, among other issues, the nature of the drafting process and the possible creation of further obligations on States. He would therefore like to know what action the Committee was planning to take regarding the Guidelines, following their endorsement by the meeting of the chairs. Lastly, he asked whether the Committee was planning to update or revise general comment No. 18 on article 6 of the Covenant.

7. **Ms. Zhong** Jing (China) said that China had always attached great importance to economic, social and cultural rights and that her Government appreciated the work done by the Committee to promote the implementation of the Covenant. In the light of comments that it had heard, her Government was of the view that the simplified reporting procedure needed to be introduced in a balanced manner that would make it possible to gain a comprehensive picture of how States parties implemented the various treaties. She hoped that States would be consulted and listened to during the preparation of lists of issues. As for the San José Guidelines, her Government shared the concerns expressed by the representative of Egypt and others regarding, in particular, the lack of transparency in their drafting and the fact that their endorsement went beyond the mandate of the meeting of the chairs. It was to be hoped that any further action by treaty bodies regarding the Guidelines would be taken in a transparent manner and in consultation with States parties. She asked what steps the Committee was planning to take in that connection.

8. **Mr. Toro Carreño** (Bolivarian Republic of Venezuela) said that his Government would like to join with the representatives of Egypt and China, who had expressed concerns about the San José Guidelines, regarding in particular the lack of a mandate on the part of the chairs and the absence of prior consultation with States parties. His delegation was also concerned about the limited time available to States during the interactive dialogue to respond appropriately to the complex questions posed and about the disrespectful and somewhat hostile language used on occasion by some experts toward the high-level delegations that represented his Government during such dialogues. Lastly, he wished to express his Government's support for the work of the treaty bodies and to reaffirm its commitment to cooperating with them.

9. **Mr. Lopes Cabral** (Portugal) said that he would like to know more about how the Committee intended to evaluate the pilot project for the simplified reporting procedure, and in particular what role States would play in that process.

10. **Ms. Ershadi** (Islamic Republic of Iran) said that her Government was of the view that, compared to other sets of rights, economic, social and cultural rights suffered from lack of recognition and that more needed to be done by the Committee and the international community to promote their implementation. As to resolution 68/268, it should not produce any new obligations for States parties. Regarding the so-called San José Guidelines, her delegation believed that guidelines of such importance and sensitivity should be drafted in a transparent and inclusive manner with the full and effective engagement of the States parties concerned. Her Government's experience of the simplified reporting procedure had been that the time allowed to the delegation to respond to the many questions raised had been insufficient for it to provide the necessary information. She hoped that the Committee would pay due

attention to preparing lists of issues prior to reporting in a clear and transparent manner.

11. **Mr. Clyne** (New Zealand) said that his Government had found the submission of reports under the simplified reporting procedures to be a generally positive experience thus far. He asked when the Committee planned to publish the general comment on sexual and reproductive health and rights that it was currently drafting.

12. **The Chair** said that he wished to allay the concerns that had been expressed about the San José Guidelines. The chairs were fully aware that they had no mandate to speak on behalf of all the treaty bodies; it was for each and every treaty body to decide how to act on their recommendations. While some other committees had already adopted the Guidelines, the Committee on Economic, Social and Cultural Rights had not yet taken a decision. As to the lack of time for delegations to respond to the questions put to them by experts during consideration of periodic reports, it was for States Members to make clear to the General Assembly that more time was required.

13. **Ms. Bras Gomes** said that the structure of the simplified reporting procedure used by the Committee allowed it to focus first on either recurrent issues or issues that that had emerged since the previous reporting period, and second on the ongoing implementation of the Covenant. In all their replies, States could provide any information that they considered relevant; they would also be asked to identify good practices in their policies that related to the implementation of the Covenant. The number of questions was limited to 30. The Committee would evaluate the pilot at the end of 2017, after the first three States had reported under the procedure; the views of the States parties involved would be a fundamental part of that evaluation. The Committee would then decide whether the list of issues prior to reporting served to further the implementation of the Covenant or whether it should revert to the regular procedure. She wished to assure States that the Committee was fully aware of the time constraints they faced when replying to questions put by experts and was seeking ways to address the issue.

14. **Ms. Zolotova** (Russian Federation) asked how often Russian was now used, in light of the decision to allocate a maximum of three languages for the work of the human rights treaty bodies, and exceptionally a fourth. Since the change, delegations from the Russian Federation had encountered serious problems, in particular in the consideration of the country's report to the Committee on the Elimination of Discrimination against Women. NGOs from the Russian Federation had been forced to speak with members of that Committee in a language that was foreign to them.

15. States parties and the members of human rights treaty bodies did not appear to have the same understanding of the provisions of resolution 68/268 regarding the meetings of the chairs of the human rights treaty bodies. The treaty bodies had been "encouraged", not "required", to continue to enhance the role of their chairs, and only in relation to procedural matters. Yet the San José Guidelines, which all treaty bodies appeared willing to adopt, covered more than procedural matters: they also imposed additional obligations on States, even though matters of substance were to be discussed in meetings with the States parties to a given instrument.

16. She therefore wished to know in what capacity the Chair had adopted the Guidelines, since the Committee had not authorized him to do so. It would also be interesting to know what procedure the Committee planned to use in considering the Guidelines for adoption. The adoption of a document that had not been considered by Committee members in draft form struck her as thoroughly undemocratic.

17. **The Chair** said that the point raised about the use of Russian was legitimate, but the treaty bodies worked on the basis of a resolution that the Russian Federation had

voted for. If the use of only three or four languages was problematic, that problem would have to be dealt with by the General Assembly, which had adopted the resolution.

18. The San José Guidelines were still being considered by the Committee, and it was still far from adopting them, as some of the language required revision.

19. **Mr. Silva Muñoz** (Uruguay) said that, in the context of the universal periodic review, Uruguay would continue recommending that States should ratify the Covenant and the Optional Protocol. In that connection, he wished to know what impact the Optional Protocol had had on the work of the Committee. His country's experience with the simplified reporting procedure had been positive.

20. The tone and substance of the debate around the San José Guidelines had greatly surprised his delegation, as it seemed to take no account of the independence of the treaty bodies and their mandate to ensure the implementation of international human rights instruments. No guidelines adopted by the chairs of the treaty bodies were legally binding, and not a word of the Covenant would be altered, so States parties would not be required to take on any new obligations. The delegation of Uruguay would welcome the adoption of the San José Guidelines, which could be an effective tool for combating reprisals against individuals or groups collaborating with the treaty bodies. In that connection, he wished to know whether the Committee had appointed a rapporteur or focal point on intimidation or reprisals, as recommended in the Guidelines.

21. **Mr. Redondo Gómez** (Spain) said that his country was satisfied with the way the simplified reporting procedure had worked in its dialogue with the Committee against Torture. It had enabled a more productive and focused discussion of problems, as well as more specific recommendations. His delegation trusted that the procedure, as it had been described by Ms. Bras Gomes, would be equally beneficial to the Committee on Economic, Social and Cultural Rights and the States parties reporting to it. He encouraged the Committee to involve civil society in the evaluation of the simplified procedure and he joined the representative of Uruguay in encouraging the Committee to adopt the San José Guidelines.

22. **Mr. Abdel-Moneim** said that, regardless of reporting procedure, reports should show how the maximum of a State party's available resources changed over time. They should also be written in such a way as to allow the Committee to determine whether a State party was making progress towards the full realization of Covenant rights.

23. **Ms. Shin**, speaking as chair of the working group on communications, said that 13 communications under the Optional Protocol had been registered since 2013 and the Committee had reached a decision on 3, finding a violation in 1 case and finding 2 others inadmissible. The working group was composed of five members, one from each of the major geographical regions, and a rapporteur was appointed for each communication. The working group studied the communications and made recommendations to the Committee, but decisions and views were adopted only by the Committee in plenary. It was possible that the Committee would come to two more decisions at the current session.

24. Information on the complaints procedure, as well as other relevant information, was available on the Committee's website. There was also a link to the jurisprudence database, which was currently being updated.

25. **Mr. Appreku** (Ghana) said that Ghana was taking steps to become a party to the Optional Protocol. The country's initial report under the Covenant was overdue, and as a result it had availed itself of the capacity-building assistance offered by the Office of

the United Nations High Commissioner for Human Rights (OHCHR). Ghana had accepted the simplified reporting procedure. The reporting delay was the result not of legal objections to the justiciability of Covenant rights but of administrative inaction.

26. **Ms. Martínez** (Ecuador) asked what mechanisms were in place to ensure that when a communication concerning a State party to the Optional Protocol was received, it was brought to the attention of the State party concerned in timely fashion. The previous day the Permanent Mission of Ecuador had received a message referring to a communication that had apparently been submitted six months earlier, yet the Mission had no record of it.

27. **Ms. Shin** said that as soon as the secretariat received a complaint, it was circulated to the members of the working group, who would decide whether the communication should be registered. Committee members would then decide whether the communication was admissible. Sometimes, if it was found inadmissible, it was not transmitted to the State party. Every effort was made to ensure that the receiving State party would have time to reply within the six-month period provided for in the Optional Protocol. She was therefore surprised to learn of the problem encountered by the Permanent Mission of Ecuador.

28. **Ms. Zolotova** (Russian Federation) asked whether the OHCHR Petitions Unit, which received the communications, had the authority to reject them before they reached the working group.

29. **Ms. Shin** said that the five members of the working group were informed, even between sessions, of any communication received by the Petitions Unit.

30. **Ms. Zolotova** (Russian Federation) said that she would appreciate hearing from a representative of the Petitions Unit whether any communications were not transmitted to the members of the working group.

31. **Ms. Edelenbos** (Secretariat) said that all communications received under the Optional Protocol to the Covenant were shared with the members of the working group.

32. **Mr. Mancisidor de la Fuente** said that the Committee had made considerable progress on two of the five general comments it was working on — namely the ones on sexual and reproductive health and on just and favourable conditions of work. Once those two general comments were adopted, possibly by the following session, work would resume on the three others, the first of which dealt with human rights, the environment and development, the second with States parties' obligations in the context of private sector activities and the third with science, technology and human rights within the framework of article 15 of the Covenant. The procedure for the preparation of general comments, which was quite arduous, provided for consultation with States parties and took account of the views of other stakeholders, as recommended in resolution 68/268.

33. **Mr. De Schutter** said that, in addition to general comments, the Committee adopted statements, which were shorter and more topical. They provided guidance to States parties on how to respond to crises that could arise at particular points in time. One such statement, in the form of a letter that had been sent to all States parties to the Covenant, had dealt with the protection of Covenant rights in the context of the recent economic and financial crisis. The Committee was considering statements on other issues, including the refugee crisis and the economic adjustment programmes demanded of debtor States by their international creditors. The statements were a way for the Committee to improve States parties' understanding of the Covenant.

34. **Mr. Bougacha** (Tunisia) asked why the Committee did not recommend that the States parties that appeared before it refrain from taking measures that prevented the

people of other States from realizing their Covenant rights. Why did the Committee not recommend that States parties act in such a way as to create an international environment favourable to the development of other countries?

35. **Mr. De Schutter** said that some of the Committee's general comments referred to States parties' extraterritorial obligations. Moreover, in its concluding observations on the reports it considered, the Committee highlighted potential problems arising from trade agreements or austerity plans. In that context, the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights were of considerable interest. A better understanding of the extraterritorial obligations of States parties was beginning to take shape.

The public part of the meeting rose at 4.35 p.m.